

ORGANIZATIONAL AND LEGAL MECHANISM FOR PROTECTING THE SECURITY ENVIRONMENT IN THE INTERNET

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INTRODUCTION

The Constitution of Ukraine emphasizes that “a person, his life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine. Human rights and freedoms and their guarantees determine the content and direction of state activity. The state is responsible to the people for its activities. Affirmation and provision of human rights and freedoms is the main duty of the state”¹. Protection of citizens is the main duty of the state. State policy should be constructed in such a way as to guarantee a person the maximum possible protection in exchange for his lawful behavior. Otherwise, the state, through the activities of competent bodies and officials, can use the right of coercion. The legal welfare state, which Ukraine aspires to be, must quickly and effectively respond to challenges and threats that its citizens face or may face, by avoiding them or minimizing negative consequences for people in particular and society in general. The rapid development and spread of information technologies is a challenge for the state, because a new type of threat is emerging – informational. It is possible to ensure the information security of a person by protecting his personal data from unauthorized use and distribution. At most, today a person can perform many even legally significant actions using the Internet, where he leaves his personal data. If this data is shared or used without authorization, it may have negative legal consequences for the person.

The development of society contributes to the increasing involvement of people in the Internet. Many necessary and sometimes legally significant actions can be done online today. However, along with this, the level of danger for Internet users is also increasing, and the biggest threat is the insufficient level of protection of users’ personal data. The indicated problem does not directly concern the Internet user as the owner of personal data, which may be used without authorization and have negative moral, psychological and legal consequences for the person. It should be solved

¹ Constitution of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/254k/96-bp#Text>

comprehensively: by the owner of personal data, who must possess the necessary minimum knowledge about personal data and technically protect it in their personal offices or accounts; recipients of personal data – companies with which the owner of personal data “communicates” and gives them consent for processing and use within the limits specified by law. They must ensure maximum protection of personal data bases of individuals from unauthorized distribution; the state – as a guarantor of personal data protection, which creates a legal mechanism for personal data protection and restoration of violated rights associated with their unauthorized distribution or use.

After all, today in developed countries the standards of personal data protection are very high. They develop rapidly in accordance with the pace of development of the state and society as a state-sanctioned reaction to the need to regulate emerging legal relations. Domestic legislation, despite the existence of certain normative acts in the field of personal data protection, has not yet legislated the creation of a body for the protection of personal data, which would effectively, at a high level, ensure the operation of the organizational and legal mechanism for the protection of personal data in accordance with international standards and would be empowered with control functions in this sphere. Despite certain legislative developments, sociological studies and reports of authorized bodies and services indicate an insufficient level of personal data protection in Ukraine. Thus, according to the report of the Ministry of Digital Transformation of Ukraine “Analysis of legislation on the protection of personal data in Ukraine” (2020), in the field of personal data protection it is recommended: “1) to take into account the current regulatory requirements necessary to meet the appropriate level of mass processing of personal data (especially in the field of social media); 2) a rapidly changing data processing environment at the international level; 3) a higher level of protection of children and minors with regard to their personal data is necessary; 4) updating industry data protection standards as a win-win moment for Ukrainian business (both for business seeking to work abroad and for the purposes of attracting foreign investment) from the point of view of a competitive position on the world market; 5) obligations of Ukraine to other countries and international organizations based on international law (for example, the Association Agreement between Ukraine and the EU)². The implementation of these recommendations will help, first of all, to update the personal data protection mechanism in accordance with

² Analysis of legislation on personal data protection of Ukraine: report. September 14, 2020. URL: https://cepl.com.ua/wp-content/uploads/2020/09/UKR_09142020_CEP_Finalnyy-zvit.pdf

the needs of society, as well as to bring domestic legislation closer to European legislation.

1. Public administration of personal data protection

The first task of the state in the field of personal data protection, and, accordingly, human protection, is to create an up-to-date legislative framework for establishing the legal basis for working with personal data. The next step should be the development and implementation of practical work mechanisms for the protection of personal data. And only after a certain time, based on the analysis of personal data protection activities in general and its individual aspects, in particular, it contributes to the prevention of offenses in the field of personal data protection and carries out certain reforms, applying forms and methods of personal data protection that would meet the demands of society and the requirements of the time.

The state implements its activities in this direction through authorized bodies and officials – public administrations. Public administration of authorized bodies and officials consists in the implementation of state policy in one or another area and is carried out by making administrative decisions and providing administrative services.

Among the peculiarities of public administration, we can mark dependence on state power. Public administration relies on state power, which acts as its basis. The state performs its functions through public administrations by granting them certain powers and imposing certain duties on them. Analyzing the performance of public administrations, it is possible to draw conclusions about the effectiveness or ineffectiveness of state policy in certain areas; ensuring the implementation of decisions of authorities. By itself, the government's decision will not be effective without ensuring its implementation by specific subjects. That is, the process of public administration is designed to ensure the implementation of government decisions, to facilitate their full implementation, which will allow to achieve a certain level of welfare of the population; nationwide prevalence. The process of carrying out public administration through the work of public administrations covers the territory of the entire state, not its individual regions. Thanks to this, it is possible to achieve the maximum effect from the implementation of the decisions of state authorities; acts as a connecting element between the state and a person. The concept of "state" is relatively abstract, because a person cannot directly grasp it with his senses, this becomes possible through the work of the state mechanism – the system of authorities and public administration. It is public administrations through the implementation of public administration processes that play the role of a link between the state and people, they coordinate the interests of different

population groups (individual and group, regional and national), ensuring a certain balance of interests.

In my opinion, public administration is a social phenomenon in democratic states, which includes the activities of authorized bodies of state power (executive, legislative and judicial), the purpose of which is to fulfil the functions of the state by forming state policy, its implementation for the construction of a legal social state. In Ukraine, public administration is carried out in accordance with the principles enshrined in the Constitution. Such principles include: the rule of law principle, the principle of legality, the principle of responsibility of authorities and their officials to people, the principle of openness.

Regardless of the scope of public administration, it is characterized by certain general features, among which we can include: the reflection of the most essential patterns of state and social development. This makes it possible to move along the path from the general to the specific, first solving the most general problems, and then within each of the general problems to find out and solve smaller ones; the presence of stable relationships between elements of public administration as a system. These relationships are expressed through the processes of information exchange between interacting elements in each specific case, and in general in the process of functioning of public administration; the presence of the specifics of the state administration itself, which is different from other types of administration. This feature is characterized by such features as universality, streamlining of a certain type of activity, implementation in the joint activity of people, the presence of a special management apparatus, and others.

Public administration functions as a certain mechanism, that is, a certain sequence of actions is used, which are manifested in a specific form and method.

In modern conditions, domestic legal science does not have a single established interpretation of the concept of “form of public administration”. For example, scientists propose to interpret it as: externally expressed action of subjects of public administration, which is carried out within the framework of their competence to fulfil the tasks set before them and has certain consequences (I. Pastuh); unified by external features, a formalized type of results of specific actions of the management body, its structural subdivisions and officials aimed at achieving the set goal (N. Meltyukhova); one or another way of external expression (formation) of the content of this activity. Each subject of public administration is endowed with the appropriate competence, which, as a rule, gives him the opportunity to choose in specific situations one or another option of behavior, option of specific actions, that is, to reflect the content of his regulatory, service or management activities in the form that, on his opinion, is the most effective

and meets the public interests to the greatest extent (T. Gurzhii); an external (formalized) expression of the activity of the public administration, carried out on the basis of the law and within the limits of the given competence, regarding the protection of human rights (in particular, the right to non-interference in private life) in connection with the processing of personal data³.

For our state and society, issues related to the public administration of personal data protection are extremely relevant. The first thing the state should do to solve them is to create a legal framework that will meet the demands of society and regulate social relations in this field in accordance with time and space requirements. “Regulatory regulation of the protection of personal data is provided for in the norms of international treaties on human rights as an integral part of the right to privacy: Art. 17 of the International Covenant on Civil and Political Rights; Art. 11 of the American Convention on Human Rights; Art. 7 of the Charter of Fundamental Rights of the European Union; Guidelines for the protection of privacy and cross-border flows of personal data; Guidelines for the regulation of computer files containing personal data; Conventions on the protection of individuals in connection with the automated processing of personal data; Art. 8 of the Directive of the European Parliament and the Council “On the protection of natural persons during the processing of personal data and on the free movement of such data”; of the General Regulation of the European Parliament and the Council (EU) “On the protection of natural persons in connection with the processing of personal data and on the free movement of such data, and on the repeal of Directive 95/46/EC”. ... At the national level, the issue of personal data protection is regulated: Art. 32 of the Constitution of Ukraine; Part 2 of Art. 21 of the Law of Ukraine “On Information”; the Law of Ukraine “On Personal Data Protection”; and subordinate regulatory legal acts (Standard procedure for personal data processing; Procedure for monitoring compliance with the legislation on personal data protection by the VRU Commissioner; Procedure for notifying the VRU Commissioner for Human Rights about personal data processing that poses a particular risk to the rights and freedoms of personal data subjects data, about the structural unit or the responsible person organizing the work related to the protection of personal data during their processing, as well as the publication of the specified information)”⁴.

³ Gurzhii T. O., Petrytskiy A. L. Legal protection of personal data: monograph. Kyiv: Kyiv. national trade and economy Univ., 2019. P. 124.

⁴ Legka O. V. Actual issues of personal data protection: domestic and international experience. *Legal position*. 2021. № 2 (31). P. 76. URL: <http://legalposition.umsf.in.ua/archive/2021/2/15.pdf>

Based on the analysis of the legal framework, the definitions of the term “form of public administration” listed above, and in view of the subject and object of our research, we can distinguish the following forms of public administration of personal data protection: issuance of regulatory acts of administration. This form of public administration is primarily aimed at establishing the organizational and legal basis for the protection of personal data. Depending on the status and competence, in other words – the level of management, the following are distinguished: a) departmental sub-legal legal regulations (central level of administration). This is a set of legal acts that have a nationwide distribution and are mandatory for all subjects, managers and recipients of personal data; b) orders issued by local bodies of public administration (territorial level of administration). This set of normative acts has a certain area of distribution, that is, it concerns the activities of a local body of public administration; c) local by-law legal normative acts (regulations, provisions), the purpose of issuing which is to regulate internal organizational activities (level of the administrative body). Such activity is carried out in order to improve the activity of a specific body of public administration of personal data protection; issuance of individual acts of administration. This is an activity aimed at settling specific cases, clarifying the circumstances of certain cases. This group of acts is issued for the purpose of ensuring the effective implementation of normative and legal acts. Such acts contain personified precisely defined authoritative prescriptions; holding organizational events. These are systematic measures aimed at ensuring the effective work of the public administration. To this form of public administration, we can include activities related to clarification of the content of normative legal acts, inspection of lower-level administrations; reception of citizens, organization of telephone “hot lines” for the population on issues of personal data protection.

In my opinion, the form of public administration of personal data protection is a concrete result of the work of public administration, classified according to certain external characteristics, with the help of which conditions are created to achieve the set goal – protection of personal data of a person from unauthorized use and distribution.

Effective public administration of personal data protection is impossible without the application of a set of methods that make it possible to study and analyze methods, ways and forms of interaction between public administration and people in the field of personal data protection. As O. M. Vdovichenko notes: “The development of the public administration system in the conditions of the reform of domestic public administration should be carried out on the basis of the use and observance of modern approaches, principles and methods that will contribute to the process of Ukraine’s integration into the European community and ensure the establishment of a high level of

democratization in the sphere of public administration authorities Scientific knowledge and understanding of the methodological foundations of public administration make it possible to justify the direction, essence and content of state management activities at the current stage of the development of Ukrainian society”⁵.

A method is a way of studying, researching something, a way to achieve a certain goal. The methods of public administration of personal data protection are, first of all, methods of performing their functions by subjects of public administration within the limits of the powers granted to them by law. “The methods of public administration are understood as a set of methods of practical performance by subjects of public administration of their administrative obligations, which correspond to the nature and scope of the competence and powers granted to them”⁶. In my opinion, the characteristic features of the methods of public administration of personal data protection are that they: express public interest in the need to protect personal data from unauthorized distribution and use. Today, the issue of personal data protection is relevant for Ukrainian society, it is “heard”, therefore the public’s interest in it is increased, and, accordingly, there is a request to the authorities to create mechanisms for their effective protection; act as a means of implementing those functions entrusted to the public administration in the field of personal data protection. In order to perform its direct functions in the field of personal data protection, the public administration must use a set of methods that allows the most effective performance of public policy functions in this field; implemented in the process of public administration. In order for the public administration of personal data protection to become a practical process from a theoretical concept, the necessary component is a set of certain actions that form a method, and the method itself is implemented in the process of practical activity.

In general, there are many classifications of public administration methods in domestic science, but we will dwell in more detail on the methods of persuasion, encouragement and coercion, as those that appeal to human consciousness and have a direct impact on the formation of obedient behavior. Persuasion, encouragement, coercion are the set of methods of public administration of personal data protection, which allows to carry out this type of activity as effectively as possible, implementing the state policy

⁵ Vdovichenko O. M. Application of methods of public administration in modern conditions: theoretical and practical aspects. *South Ukrainian legal journal*. 2022. № 3. P. 131. DOI: <https://doi.org/10.32850/sulj.2022.3.20>

⁶ *Ibid.* P. 127.

in this sphere of public life. The very first feature of these methods is an appeal to a person's consciousness, the search for such methods and means of influence that will help to form in a person a conscious need to act in accordance with the requirements of the law, receiving in return from the state guarantees of protection and immediate restoration of his violated rights or freedoms.

The method of persuasion is one of the methods of public administration of personal data protection, the essence of which is to systematically influence a person's consciousness in order to make him aware of the need to act in accordance with the requirements of the law and legal prescriptions. "Practical application of the method of persuasion takes place thanks to the use of specific forms, which can be understood as a list of means of influencing the consciousness and behavior of a person in order to make him aware of the expediency and the need to comply with universally binding normative prescriptions"⁷. Those statutory prescriptions that form legislation in the field of personal data protection are adopted in the interests of society and with the aim, first of all, of protecting people. The task of the public administration when using this method is to explain why certain measures are taken to protect personal data. An indicator of the effectiveness of the application of this method is the increase in the level of public trust in the authorities in the form of public administration. The defining feature of this method is the voluntary fulfilment of the requirements of regulatory acts.

The incentive method is a method of public administration of personal data protection, which consists in the process of matching the interests and needs of a person whose behavior needs to be stimulated in order to achieve the goal of public administration in a specific area, with the interests and needs of the state and society. Only by balancing the interests of a person and society, the state, it is possible to solve certain problematic issues in the field of personal data protection. The use of the incentive method demonstrates the readiness of the state in the form of public administration to solve the problems that arise by stimulating the subjects of the administration to perform effectively. The method of encouragement is always synchronous, it is applied in a specific time period in order to solve specific, urgent tasks.

Coercion as a method of public administration of personal data protection is the imperative influence of a subject of public administration on other subjects in the event of their violation of legal norms in the field of

⁷ Zhuravel Ya. V. Some issues of application of the method of persuasion in public administration. *Current issues of domestic jurisprudence*. 2020. № 2. P. 84. DOI: <https://doi.org/10.15421/392048>

personal data protection. This method provides for the exclusive possibility of the state in the form of public administration to apply coercive measures. The features of the method of coercion in the public administration of personal data protection include: application to protect legal relations arising in the field of personal data protection; established existence of the fact of committing an offense is a basis for the use of coercion; subjects of coercion – public administration bodies, their officials; a mandatory feature is the verticality of the application of coercion. According to the mandate, coercion cannot be applied between public administrations of the same level; clear legal certainty. The procedure and grounds for the use of coercion are clearly defined in normative legal acts; it can be applied exclusively in the cases and forms defined by law; enforcement of application – are mandatory for all subjects of public administration of personal data protection.

The choice of the method of public administration of personal data protection must be carried out taking into account such features as: the field of activity, objects of influence, personnel and technical capabilities – then it will be effective and fulfil its direct purpose – the implementation of state policy in the field of personal data protection. “The protection of personal data ... is carried out on the basis of the priority of public interests over private interests and in accordance with the principles of legality and the rule of law. The creation of an effective personal data protection system is part of Ukraine’s international obligations, including those related to the European integration of our country. In particular, the European integration aspirations of our country largely depend on the fulfilment of this obligation”⁸.

2. Organizational and legal mechanism of protection of personal data

Despite the need for certain improvements in the field of personal data protection, domestic legislation has an effective organizational and legal mechanism for personal data protection. This mechanism directly combines legislative norms in the field of personal data protection, which regulate legal relations in this field, and methods of ensuring the effective functioning of these norms and monitoring their compliance. For example, the Constitution of Ukraine (21, 31, 32) states that all people are free and equal in their dignity and rights. Human rights and freedoms are inalienable and inviolable. ... No one can be subjected to interference in his personal and family life, except for the cases provided for by the Constitution of Ukraine. It is not allowed to collect, store, use and distribute confidential information

⁸ Sereda O. H., T. V. Krasiuk. Some issues of the special regime for the protection of sensitive personal data of the employee. *Dnipro scientific journal of public administration, psychology, law*. 2023. Iss. 1. P. 148. DOI: <https://doi.org/10.51547/ppp.dp.ua/2023.1.25>

about a person without his consent, except in cases specified by law, and only in the interests of national security, economic well-being and human rights⁹. Everyone is guaranteed the right to protection from interference in personal life, confidentiality of correspondence, telephone conversations, correspondence (including e-mails) and other information related to personal data. These constitutional norms are the basis for further development and improvement of domestic legislation in the field of personal data protection.

The legal act that most fully regulates legal relations in the field of personal data protection is the Law of Ukraine “On the Protection of Personal Data”¹⁰. The scope of this act is the regulation of legal relations related to the protection and processing of personal data, and it is aimed at protecting the fundamental rights and freedoms of a person and a citizen, in particular the right to non-interference in personal life, in connection with the processing of personal data. Again, this legal act is aimed at protecting fundamental human rights enshrined in the Constitution of Ukraine. The Law states: personal non-property rights to personal data, which each natural person has, are inalienable and inviolable. Everyone is guaranteed the right to protection of their personal data from illegal processing and accidental loss, destruction, damage in connection with intentional concealment, failure to provide or untimely provision of them, as well as protection from providing information that is unreliable or dishonours honour, dignity and business the reputation of an individual. A person has the right to apply for the protection of his rights in relation to personal data to state authorities, local self-government bodies, whose powers include the protection of personal data, as well as to apply legal remedies in case of violation of the legislation on the protection of personal data.

The codified legal acts in which we can find norms regarding the protection of personal data are the Criminal Code of Ukraine and the Civil Code of Ukraine. Criminal codex of Ukraine¹¹ contains several provisions of the law on the protection of personal data. Thus, Article 163 provides for criminal liability for violating the confidentiality of correspondence, telephone conversations, telegraphic or other correspondence transmitted by means of communication or through a computer. It is in these ways that people can transfer their personal data to a specific individual or legal entity, but do not want them to be re-transmitted to third parties. Article 182 of the Code recognizes as a crime the illegal collection, storage, use and

⁹ Constitution of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/254-bp#Text>

¹⁰ On the protection of personal data: the Law of Ukraine dated June 1, 2010. № 2297-VI. URL: <https://zakon.rada.gov.ua/laws/show/2297-17#Text>

¹¹ Criminal codex of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text>

distribution of confidential information about a person without his consent or the distribution of this information in a public speech, a publicly displayed work, or in mass media. The person against whom the actions specified in these articles were committed is guaranteed the right to judicial protection. Owners of personal data bases must use them exclusively within the limits of the law.

In the Civil Code of Ukraine¹² the legislator attributed personal data to personal non-property rights and determined the way to protect them from illegal encroachments in court. The content of personal non-property right is the possibility of an individual to freely, at his own discretion, determine his behavior in the sphere of his private life. Of course, such behavior should not harm other members of society, violate their rights or freedoms.

In Ukraine, the Regulation of the European Parliament and the Council (EU) 216/679 of 27.04.2016 on the protection of natural persons in the processing of personal data and on the free movement of such data, and on the repeal of Directive 95/46/EC (General Data Protection Regulation) is applied¹³. This is an international normative legal act in the field of personal data protection on the Internet, the consent to the mandatory application of which was granted by the Verkhovna Rada of Ukraine. This document is relevant today, as Internet users often fill out various application forms for registration on websites, leaving their personal data. Therefore, the issue of protecting personal data from unauthorized use with subsequent negative consequences (in some cases also legal) for the subject of personal data is one of the priority tasks of the state in the field of protection of human and citizen rights and freedoms. The developers note: “Rapid technological development and globalization lead to the emergence of new difficulties for the protection of personal data. The scale of collection and sharing of personal data has increased significantly. Technologies allow both private companies and public bodies to use personal data on an unprecedented scale in order to carry out their activities. Individuals are increasingly providing access to personal information publicly and globally. Technologies have changed both the economy and social life and should further stimulate the free movement of personal data within the EU and their transfer to third countries and international organizations, while ensuring a high level of personal data protection.

¹² Civil Code of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text>

¹³ Regulation of the European Parliament and Council (EU) 216/679 of 27.04.2016 on the protection of natural persons in the processing of personal data and on the free movement of such data, and on the repeal of Directive 95/46/EC (General Data Protection Regulation). URL: <https://ips.ligazakon.net/document/MU16144>

Such changes require strong and more coherent data protection frameworks in the EU, with an appropriate enforcement mechanism in place, taking into account the importance of building trust to enable the development of the digital economy at the level of the internal market. Individuals should have control over their own personal data. It is necessary to strengthen legal and practical certainty for individuals, business entities and public authorities¹⁴. The appearance of this document in the European legal space indicates the priority of human rights for the international community and determines the direction of its activities. Today, it can be evaluated as a timely response to society's demands: the rapid development of information technologies and the growth of their role in human life force the state to develop "rules" that will regulate relations in this sphere of life of society and the state. Therefore, it is the state that acts as the guarantor of the protection of a person's personal data; its task is to create an organizational and legal mechanism that would effectively protect human rights related to personal data; formed a complex of preventive means and measures to minimize the commission of offenses in the field of personal data protection; as soon as possible restoration of the violated rights related to the protection of personal data. Despite this, the subjects of personal data must also contribute to their preservation by performing a set of legal and technical actions in order to minimize possible negative consequences for themselves.

The organizational component of the personal data protection mechanism is formed by bodies and officials authorized to perform state functions in this area. By law, they are empowered to protect personal data, control compliance with legislation in the field of personal data. In Art. 22 of the Law of Ukraine "On the Protection of Personal Data" defines an exhaustive list of bodies that exercise control over compliance with the legislation on the protection of personal data within the limits of the powers provided for by law. This includes: The Commissioner of the Verkhovna Rada of Ukraine for human rights and courts.

The powers of the VRU Commissioner for Human Rights include: "1) to receive proposals, complaints and other appeals from individuals and legal entities on issues of personal data protection and to make decisions based on the results of their consideration; 2) on the basis of requests or on one's own initiative, to carry out on-site and off-site, scheduled and unscheduled inspections of the owners or managers of personal data in the manner determined by the Commissioner, with access to the premises where

¹⁴ Regulation of the European Parliament and Council (EU) 216/679 of 27.04.2016 on the protection of natural persons in the processing of personal data and on the free movement of such data, and on the repeal of Directive 95/46/EC (General Data Protection Regulation). URL: <https://ips.ligazakon.net/document/MU16144>

personal data is processed provided in accordance with the law; 3) receive at your request and have access to any information (documents) of the owners or managers of personal data, which is necessary to exercise control over ensuring the protection of personal data, including access to personal data, relevant databases or files, information from limited access; 4) to approve normative legal acts in the field of personal data protection in the cases provided for by this Law; 5) based on the results of the inspection and consideration of the appeal, issue mandatory requirements (prescriptions) on the prevention or elimination of violations of the legislation on the protection of personal data, including on the change, deletion or destruction of personal data, ensuring access to them, providing or prohibiting them providing to a third party, stopping or terminating the processing of personal data; 6) provide recommendations on the practical application of the legislation on the protection of personal data, clarify the rights and obligations of relevant persons at the request of subjects of personal data, owners or managers of personal data, structural units or persons responsible for the organization of work on personal data protection, other persons; 7) interact with structural divisions or responsible persons who, in accordance with this Law, organize work related to the protection of personal data during their processing; publish information about such structural divisions and responsible persons; 8) submit proposals to the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, other state bodies, local self-government bodies, and their officials regarding the adoption or amendment of normative legal acts on the protection of personal data; 9) at the request of professional, self-governing and other public associations or legal entities, provide opinions on draft codes of conduct in the field of personal data protection and changes to them; 10) draw up protocols on bringing to administrative responsibility and send them to the court in cases provided for by law; 11) inform about the legislation on the protection of personal data, the problems of its practical application, the rights and obligations of the subjects of relations related to personal data; 12) monitor new practices, trends and technologies of personal data protection; 13) organize and ensure interaction with foreign subjects of relations related to personal data, including in connection with the implementation of the Convention on the Protection of Individuals in Connection with Automated Processing of Personal Data and the Additional Protocol to it, other international contracts of Ukraine in the field of personal data protection; 14) participate in the work of international organizations on the protection of personal data¹⁵.

¹⁵ On the protection of personal data: The Law of Ukraine dated June 1, 2010. № 2297-VI. URL: <https://zakon.rada.gov.ua/laws/show/2297-17#Text>

The importance and relevance of this part of the work of the VRU Commissioner for Human Rights is evidenced by the need to include a report on the state of compliance with legislation in the field of personal data protection in the annual report on the state of compliance and protection of human and citizen rights and freedoms in Ukraine.

The subject of personal data has the right to apply to the court for restoration of the violated right. According to the letter of the VRU Commissioner for Human Rights, the court has control mechanisms for compliance with the legislation on the protection of personal data within the limits of the powers provided by law. It states: “Article 22 of the Law of Ukraine “On the Protection of Personal Data” provides for control over compliance with the legislation on the protection of personal data, within the limits of the powers provided for by law, on the Commissioner and the courts. Thus, the mechanism for exercising the specified control by the courts should take place on the basis of the legislation on the judicial system, that is, in the process of judicial proceedings by the courts (civil, administrative, criminal and during the consideration of cases on administrative offenses), as well as by granting a higher specialized court by the Plenum, based on the results of generalization of judicial practice, clarifications of a recommendatory nature on the application of legislation by specialized courts when deciding cases of the relevant court jurisdiction (clauses 2 and 6 of the second part of Article 36 of the Law of Ukraine “On the Judicial System and the Status of Judges”)¹⁶. Ultimately, the organizational and legal mechanism of personal data protection unites state authorities, local self-government bodies, owners, managers of personal data by granting them certain rights and assigning them certain duties in the field of personal data protection. In accordance with the Law of Ukraine “On the Protection of Personal Data”, a structural unit is created (defined) in state authorities and local self-government bodies, as well as in owners or managers of personal data that carry out personal data processing, which is subject to notification in accordance with this Law, or responsible person organizing work related to the protection of personal data during their processing.

Information about the specified structural unit or responsible person is reported to the Commissioner of the Verkhovna Rada of Ukraine for human rights, who ensures its publication. The powers of a structural unit or a person responsible for the protection of personal data include: 1) informing

¹⁶ Letter from the Commissioner for Human Rights of the Verkhovna Rada of Ukraine from 03.03.2014 № 2/9-227067.14-1/ND-129. URL: <https://zakon.rada.gov.ua/laws/show/v7067715-14#Text>

and advising the owner or controller of personal data on compliance with the legislation on personal data protection; 2) interaction with the Commissioner for Human Rights of the Verkhovna Rada of Ukraine and the officials of his secretariat designated by him on issues of prevention and elimination of violations of the legislation on the protection of personal data. In accordance with the requirements of the Law of Ukraine “On the Protection of Personal Data”, natural persons-entrepreneurs, including doctors who have the appropriate license, lawyers, notaries, personally ensure the protection of personal data they own.

3. Legal basis of protection of personal data on the Internet

Today, despite certain developments in this area, each of the groups has many problems related to the protection of personal data. Average Internet users often lack elementary knowledge about the possibilities of protecting their personal data. Companies and organizations of various forms of ownership that own databases of personal data often do not use all available mechanisms to protect them from unauthorized use or openly neglect them. The state, as the guarantor of the protection of personal data, should form more relevant legal norms designed to respond more effectively to the challenges that arise with the development of society and relevant information technologies.

Thus, in 2021, a study was conducted of twenty leading technology companies operating on the Ukrainian market, regarding the protection of personal data of their customers¹⁷. The researchers studied the websites of such companies as: PJSC “Kyiv star” – Kyivstar.ua; Lifecell LLC – Lifecell.ua; PJSC “VF Ukraine” – Vodafone.ua PJSC “DATAGRUP” – DataGroup.ua; “TRIOLAN” LLC – Triolan.com; LLC “ROZETKA.UA” – Rozetka.com.ua; UAPROM LLC – Prom.ua; EMARKET UKRAINE LLC / OLX Global BV – Olx.ua; Ukrainian Internet Holding LLC “Ukrnet” – Ukr.net; “Nova Poshta” LLC – NovaPoshta.ua; LLC “COMFY TRADE” – Comfy.ua; LLC «GK “FOXTROT”» – Foxtrot.ua; ID ELDORADO LLC – Eldorado.ua; LLC “ZT-INVEST” – Citrus.ua LLC “ALLO” – Allo.ua; MAKEUP GLOBAL/TOV “Makeup” – Makeup.com.ua; LLC “KASTA GROUP” – Kasta.ua; LLC “SILPO-FOOD” – Silpo.ua; “Zakaz Ukraine” LLC – Zakaz.ua; LLC “LANET TELECOM” – Lanet.ua. The purpose of the study was to analyze the company’s policy on compliance with the digital rights of users with an emphasis on the protection of personal data.

¹⁷ Personal data protection index 2021. URL: <https://uadigital.report/index-of-personal-data-protection-2021.pdf>

Table 1

Personal data protection index

The company name	Compliance with domestic legislation on personal data, %	Compliance with European standards regarding personal data, %
PJSC “Kyiv star”	60	33,3
Lifecell LLC	50	3,8
PJSC “VF Ukraine”	40	33,3
PJSC “DATAGRUP”	50	58,3
“TRIOLAN” LLC	10	0
LLC “ROZETKA.UA”	50	41,6
UAPROM LLC	90	75
EMARKET UKRAINE LLC	80	83,3
Ukrainian Internet Holding LLC “Ukrnet”	100	75
“Nova Poshta” LLC	80	41,6
LLC “COMFY TRADE”	70	41,6
LLC “GK “FOXTROT””	80	75
ID ELDORADO LLC	50	50
LLC “ZT-INVEST”	80	50
LLC “ALLO”	70	66,7
MAKEUP GLOBAL/TOV “Makeup”	70	50
LLC “KASTA GROUP”	70	50
LLC “SILPO-FOOD”	30	25
“Zakaz Ukraine” LLC	80	66,7
LLC “LANET TELECOM”	20	16,7

The conclusions of the study are as follows:

“1. The best results among the 20 studied companies were demonstrated by Olx.ua with a score of 77.5 %, Ukr.net and Foxtrot.ua with a score of 70 %, each out of the maximum possible 100 % as a reflection of the state of the corporate privacy policy and protection of users’ personal data.

2. At the same time, even for Olx.ua, Ukr.net and Foxtrot.ua there is room for improvement of their corporate policy, in particular in terms of compliance with the principle of minimizing the data they collect about users (Olx.ua), publication of previous versions of the privacy policy on the sites (Olx. ua, Ukr.net), enabling users to obtain a copy of their personal data, specifying time limits for responses to user requests (Ukr.net).

3. 12 out of 20 private companies received at least 50 % of the maximum number of points according to the criterion of personal data protection. The corporate policy of these companies is rated as average and above average level in the context of ensuring effective protection of personal data of their customers. These companies included Kyivstar.ua, Comfy.ua, Allo.ua, Kasta.ua, Prom.ua, NovaPoshta.ua, Vodafone.ua, Zakaz.ua, Citrus.ua and the already mentioned Olx.ua, Ukr.net and Foxtrot.ua.

4. The mentioned companies should pay attention to the principle of minimizing the data they collect about users, to publishing a privacy policy in a simple and accessible form on their website, to clearly prescribing the process of transferring data to third parties, etc.

5. 8 out of 20 companies selected for the study scored less than 50 % of the maximum possible points, which indicates a lower-than-average level of protection of personal data reflected in the corporate policy. Among them are Eldorado.ua, DataGroup.ua, Lifecell.ua, Rozetka.com.ua, Makeup.com.ua, Silpo.ua, Lanet.ua and Triolan.com.

6. Most of the listed companies have significant shortcomings in the four categories of the study – from compliance with the requirements of national legislation to ease of use of the site and inclusiveness. The management of these companies should review the corporate policy of privacy and protection of personal data, develop and implement a plan to strengthen the privacy policy.

7. On the websites of 4 companies (Vodafone.ua, Silpo.ua, Triolan.com, Lanet.ua) there is no mark for the user to grant permission for the processing of his personal data, although this is one of the requirements of the law.

8. The 10 surveyed companies do not inform their users how long these companies will store user information.

9. On the websites of 4 companies (Triolan.com, Makeup.com.ua, Silpo.ua, Lanet.ua) users do not have the opportunity to delete their saved personal data.

10. 15 investigated companies do not describe the conditions for deleting the user's account after the termination of the contract / under conditions of non-use of the account.

11. 10 surveyed companies do not indicate where and how they store user data (location of servers)¹⁸.

Therefore, the data of the study demonstrate the problems of companies receiving personal data in the field of personal data protection on the Internet, which exist today. Despite the existence of a legal framework, the

¹⁸ Personal data protection index 2021. URL: <https://uadigital.report/index-of-personal-data-protection-2021.pdf>

recipients of personal data do not always or not fully or selectively comply with the requirements of the law. That is why the problem of protecting personal data on the Internet concerns both the subject of personal data, the recipient of personal data, and the state.

First of all, the person who provides his personal data to third-party individuals or legal entities must take care of their basic protection. In order to protect his personal data, the Internet user (subject of personal data) must: know what is related to personal data; set reliable passwords for your personal offices or accounts; use only verified sites, on which it is provided to mark the consent to the processing of personal data; always carefully read the document on granting consent to the processing of personal data (it must be specified what information is collected and how it will be used; the conditions under which the information can be transferred to third parties; the possibility of deleting the data by the user; a concise and clear description company's privacy policy).

Internet users spend most of their time in social networks, where they talk about themselves and find a lot of information about others. This information also refers to personal data. Therefore, it is always worth understanding that the published information can be used by other people. Today, all social networks and messengers have the function of saving information from other accounts or accounts. That is, even after deleting one or another of your publications, records, you cannot be sure that this information has been deleted forever, because someone could have saved it (although social networks have now developed appropriate tools where you can view who saved certain publications, photos – and video materials).

When installing new programs on your computer or phone, it is advisable to always check the “Settings” section, where you can limit the amount of data for collection and processing, prohibit the viewing of materials of a certain category of users of social networks or messengers.

If a person no longer plans to use a certain social network, a personal account on the website of a particular company, it is necessary to completely delete his account. Also, when changing the device, you need to delete your personal data so that they do not get to the next owner of the device.

All these tips are rather technical points that must be followed in order to protect personal data. This is the necessary minimum of actions that must be taken by the subject of personal data to protect personal data from unauthorized use.

In 2019 and 2021, a nationwide survey of the level of digital literacy of the population of Ukraine was conducted. As for the level of awareness of the possibilities of protecting their data on the Internet, then: since 2019, cases of fraudulent actions on the Internet have increased (on average, the number of people who experienced security-related problems due to the use

of Internet); receiving fraudulent messages, being redirected to fake websites asking for personal information, and fraudulent use of a credit or debit card remain the most common online abuses people face in 2019; among the basic courses for increasing the level of digital literacy, the following are in greatest demand: online security; fast and high-quality information search on the Internet; distinction between reliable and unreliable sources of information; use of Internet banking services. That is, Ukrainians want to increase their level of digital literacy primarily for the purpose of security – protecting their data from unauthorized use.

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

In Ukraine, the legal bases for the protection of personal data on the Internet are the Constitution of Ukraine, the Law of Ukraine “On the Protection of Personal Data”, the Criminal Code of Ukraine, the Civil Code of Ukraine, decisions of the Constitutional Court of Ukraine, international legal acts, consent to the mandatory use of which is given by the Verkhovna Rada of Ukraine, in particular Regulation of the European Parliament and of the Council (EU) 216/679 of 27.04.2016 on the protection of natural persons in the processing of personal data and on the free movement of such data, and on the repeal of Directive 95/46/EC (General Regulation on data protection).

Articles 21, 31, 32 of the Constitution of Ukraine state that all people are free and equal in their dignity and rights. Human rights and freedoms are inalienable and inviolable. ... No one can be subjected to interference in his personal and family life, except for the cases provided for by the Constitution of Ukraine. It is not allowed to collect, store, use and distribute confidential information about a person without his consent, except in cases specified by law, and only in the interests of national security, economic well-being and human rights¹⁹. Everyone is guaranteed the right to protection against interference in personal life, confidentiality of correspondence, telephone conversations, correspondence (including e-mails). The effect of these legal norms also extends to relations on the Internet and acts as a basis for further development and improvement of domestic legislation in the field of personal data protection on the Internet. Law of Ukraine “On Protection of Personal Data”²⁰ is the main regulatory legal act that regulates legal relations related to the protection and processing of personal data, and

¹⁹ Constitution of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/254k/96-bp#Text>

²⁰ On the protection of personal data: the Law of Ukraine dated June 1, 2010. № 2297-VI. URL: <https://zakon.rada.gov.ua/laws/show/2297-17#Text>

is aimed at protecting the fundamental rights and freedoms of a person and a citizen, in particular the right to non-interference in personal life, in connection with the processing of personal data.

The Law emphasizes that personal non-property rights to personal data, which each natural person has, are inalienable and inviolable. Everyone is guaranteed the right to protection of their personal data from illegal processing and accidental loss, destruction, damage in connection with intentional concealment, failure to provide or untimely provision of them, as well as protection from providing information that is unreliable or dishonours honour, dignity and business the reputation of an individual. A person has the right to apply for the protection of his rights in relation to personal data to state authorities, local self-government bodies, whose powers include the protection of personal data, as well as to apply legal remedies in case of violation of the legislation on the protection of personal data.

Criminal codex of Ukraine²¹ contains legal norms regarding the protection of personal data on the Internet. Thus, Article 163 provides for criminal liability for breaching the confidentiality of correspondence, in particular, correspondence transmitted through a computer. Article 182 of the Code recognizes as a crime the illegal collection, storage, use and distribution of confidential information about a person without his consent or the distribution of this information in a public speech, a publicly displayed work, or in mass media. The person against whom the actions specified in these articles were committed is guaranteed the right to judicial protection. In the Civil Code of Ukraine²² personal data is classified as personal non-property rights and the method of their protection against illegal encroachments in court is determined. The content of personal non-property right is the possibility of an individual to freely, at his own discretion, determine his behavior in the sphere of his private life.

The international legal act in the field of personal data protection on the Internet, the consent to the mandatory application of which was granted by the Verkhovna Rada of Ukraine, is the Regulation of the European Parliament and of the Council (EU) 216/679 of 04/27/2016 on the protection of natural persons during the processing of personal data and on the free movement of such data, and on the repeal of Directive 95/46/EC (General Data Protection Regulation). The developers of this document emphasize: “Rapid technological development and globalization lead to the emergence of new difficulties for the protection of personal data. The scale of collection and sharing of personal data has increased significantly. Technologies allow

²¹ Criminal codex of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text>

²² Civil Code of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text>

both private companies and public bodies to use personal data on an unprecedented scale in order to carry out their activities. Individuals are increasingly providing access to personal information publicly and globally. Technologies have changed both the economy and social life and should further stimulate the free movement of personal data within the Union and its transfer to third countries and international organizations, while ensuring a high level of personal data protection. Such changes require a strong and more coherent framework for data protection in the Union, with an appropriate enforcement mechanism in place, taking into account the importance of building trust to enable the development of the digital economy at the level of the internal market. Individuals should have control over their own personal data. It is necessary to strengthen legal and practical certainty for individuals, business entities and public authorities”²³.

This Regulation is the reaction of the European community to the current challenges that have arisen in connection with the development of information technologies and the growth of their role in the life of a person. This is another evidence of the recognition of a person, his rights and freedoms as the highest value for the European legal family and the priority of their provision.

CONCLUSIONS

So, summarizing, I can conclude that public administration is a social phenomenon in democratic states, which includes the activities of authorized bodies of state power (executive, legislative and judicial), the purpose of which is to ensure the performance of state functions through the formation of state policy, its implementation for construction of a legal social state. Forms of public administration of personal data protection are: issuance of normative acts of administration, issuance of individual acts of administration, holding of organizational events. Methods of public administration of personal data protection include such methods as persuasion, encouragement and coercion. The need for further study of the forms and methods of public administration of personal data protection is a requirement of the time in connection with the rapid development of information technologies and the need to guarantee a person’s safety when working with them, and, if necessary, a quick and high-quality restoration of violated human rights caused by the unauthorized distribution of personal data and minimizing their possible negative consequences for humans. The organizational and legal mechanism structurally consists of two elements – organizational and legal. An organizational element is a form of carrying out certain actions.

²³ Civil Code of Ukraine. URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text>

In a broader sense, it is a set of organizational and administrative actions that ensures the effective fulfilment of the set goals and tasks. Considering the subject of our research, the organizational element of the personal data protection mechanism is the activity of bodies, services, and officials who are empowered by law to take certain actions to process, store and ensure the protection of personal data. A legal element is a structural component of an organizational and legal mechanism that, with the help of the means and methods available in a certain national legal system, regulates social relations in a certain area with the aim of ensuring law and order. The legal element of the personal data protection mechanism is the presence of an effective legal framework (legislative framework). Therefore, the organizational and legal mechanism for the protection of personal data is a set of legal norms and a set of preventive measures carried out by relevant state bodies, services and officials aimed at protecting personal data, stopping offenses, applying coercion to offenders and restoring violated human rights, which related to personal data.

After all, the state guarantees the protection of personal data, that is, it creates all the conditions for effective protection and as soon as possible restoration of the violated rights of a person related to personal data. Subjects of relations related to personal data are obliged to ensure the protection of this data from illegal processing, as well as from illegal access to it. Such entities must take a set of legal and technical actions aimed at the highest possible level of protection of personal data on the Internet. In the end, the set of legal acts analyzed above constitutes the legal basis for the protection of personal data on the Internet. Together, they are designed to form and guarantee an effective mechanism to ensure information security of a person, minimize the possibility of unauthorized use of personal data and quickly restore violated human rights related to the distribution of personal data.

SUMMARY

Public administration as a field of knowledge and a discipline that has a completely practical direction is also built according to the general laws of science. The forms of public administration express its content through the definition of a clear mechanism of public administration (performance by the state of its functions through public administrations), and the implementation methods make it possible to trace the effectiveness of state policy in a certain direction and, if necessary, to improve the existing ones or use new ways of achieving the set goals. The study of forms and methods of public administration of personal data protection is extremely relevant for Ukrainian society and the state, because today's realities indicate a low level of personal data protection. The concept of "personal data protection" is

developed in detail in domestic jurisprudence. The law regulates legal relations related to the protection and processing of personal data, with the aim of protecting the fundamental rights and freedoms of a person and a citizen, and, first of all, the right to non-interference in personal life, in connection with the processing of personal data. However, the rapid development of information technologies, the digitalization of society forces us to improve the organizational and legal mechanism of personal data protection every time, to search for more effective and reliable methods and means of their protection. Despite the existence of a legal framework, the recipients of personal data do not always or not fully or selectively comply with the requirements of the law. That is why the problem of protecting personal data on the Internet concerns both the subject of personal data, the recipient of personal data, and the state. At most, along with the technical capabilities of personal data protection, a person should also know his rights and obligations related to the protection of personal data and the restoration of his violated rights by legal means.

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