
GENERAL REGULATION ON PERSONAL DATA PROTECTION. CERTAIN ASPECTS OF THE GDPR'S IMPACT ON LEGAL ENTITIES IN THE REPUBLIC OF ALBANIA**Merisa Çeloaliaj**Commissioner of the Right to Information and Personal Data Protection, Department of Legal Affairs, Albania, merisa.celoaliaj@hotmail.com

Abstract: Actuality, recent, has made us witnesses of rapid technological developments, as part of the globalization process, which inevitably affect to our lives. Technological developments facilitate our day-to-day life starting from the most common aspects and advancing at the speed of light to more complex processes that the human mind would not have been able to solve in the same space of time and with the same resources utilized. Free movement, downloading different apps on our smartphones, shopping online or the registering on social networks are just some of the activities that each of us performs daily, often without being aware of what brings these activities together is actually an action, which is legally called "processing of personal data of the individual". Often with the help of technology, private companies and public authorities collect personal information from clients, services receivers or ordinary citizens and they use it to an unprecedented extent in the pursuit of their activities and goals. The protection of personal data of individuals is in fact a fundamental right, which is sanctioned by a legislation of particular importance in international and domestic law. Even in the Albanian legal order, the right to protection of personal data is sanctioned by a specific legal corpus. In the context of the particular importance of the sensitivity that personal data bears, the European Union has adopted the GDPR, an improved act that reinforces the level of protection of the individual against bureaucracy and rapid technological developments. This modest paper focuses on the impact of this regulation in Albania on public and private legal entities that collect and process personal data. How will the GDPR affect, as an act focusing on respect for private and family life, housing and communications, personal data protection, free thought, conscience and religion, freedom of expression and information, freedom to perform business, the right to effective protection and fair trial in terms of cultural, religious and linguistic diversity, decision-making and activity of various entities in the Republic of Albania? The structure of this paper includes in the introductory section a brief history of the relevant legal acts, goes on to explain some specific terms and addresses important aspects of the impact on legal entities of the latest European Union regulation in the field of protection of personal data.

Keywords: personal data, legislation, GDPR, privacy, Republic of Albania.

The rapid technological evolution and globalization bring new challenges to the protection of personal data. The truth is, technological developments have made our day-to-day life easier, but on the other hand, using these technologies, in the case of social networking, downloading smartphone applications or on-line applications for various services, with successive actions of whether or not authorized by us, without realizing we are in a clear case of the use of personal data. Legally speaking, we are dealing with "processing of personal data of the individual"²⁷⁰ and in these circumstances the need arises for the protection of personal data that is generated, collected and processed. The international and domestic legal frameworks contain their own legal provisions for the protection of personal data.

The purpose of exchanging and collecting personal data has grown significantly and thanks to technological developments it is possible for public authorities to use personal data in an unprecedented way in their activities.

Regarding the international legal framework, we first refer to the European Convention on Human Rights as an act focusing on fundamental rights and which in its Article 8²⁷¹ guarantees the right to private life, family and correspondence protection. Although this article does not specifically define an exhaustive meaning of the term

²⁷⁰Law no. 9887, dated 10.03.2008, "On the protection of personal data", Article 3 "Processing of personal data" is any action or group of actions, which are performed on personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, transmission, distribution or otherwise making available, alignment or combination, photography, reflection, disposal, supplementation, selection, blocking, erasure or destruction, even if they are not registered in a database."

²⁷¹European Convention on Human Rights, Article 8, paragraph 1- Everyone has the right to respect their private and family life, home and their correspondence.

"personal data", from the practice of the European Court of Human Rights, it follows that Article 8 constitutes the legal basis for referring a case to this court with regard to the protection of the personal data.

Technological developments of recent years have induced the need for more adequate protection of personal data in response to newer challenges. In these circumstances, the Council of Europe adopted the Convention 108 "Convention on the protection of individuals with regard to automatic processing of personal data", in 1981. The approval of this Convention is essential in terms of protection of personal data; because of its content it clarifies the principles of collection, administration and storage of personal data in relation to the ratification of the signatory states. With the focus on the most complete and practical protection as well as the progress of activities in the field of personal data protection, we consider as important the role of the Personal Data Commissioners, including the Albanian Commissioner for Personal Data Protection, who started the activity as an independent institution in March 2008. The Republic of Albania ratified Convention 108 in October 2004 between the relevant laws²⁷².

As a fundamental right, the protection of individuals with regard to the processing of personal data is also highlighted by Article 8, paragraph 1, of the Charter of Fundamental Rights of the European Union²⁷³, and Article 16, paragraph 1, of the Treaty on the Functioning of the European Union²⁷⁴, which state that everyone has and reserves the right to protection of personal data.

Referring to the domestic legal framework, in the Republic of Albania the right to protection of personal data is provided as a constitutional right in Article 35²⁷⁵ of our Constitution. Likewise, Law No. 9887/2008 "On Personal Data Protection" has as its object the determination of the rules for the protection and legal processing of personal data.

The International Law Corpus has paid particular attention to personal data through the provisions of Directive 95/46 of the European Parliament and of the Council, "On the protection of individuals with regard to the processing of personal data and the free movement of such data", of the year 1995. This directive stipulated as "personal data" any information that can be used to make an identifiable person and according to it every company should take explicit consent before collecting and using any given individual data. The challenges of globalization together with consequences itself led to a very significant moment for the protection of personal data. After a transitional period of nearly 2 years, the 25th of May 2018 brought into force in the European Community the "European General Data Protection Regulation" (GDPR) as a very important instrument in respect of human dignity and of individual privacy.

It is worth mentioning that the competent institution for personal data protection in our country is the Commissioner for the Right to Information and Protection of Personal Data. This institution carries out its activity on the basis of Law No. 9887, dated 10.03.2008 "On protection of personal data". This authority was established under Convention 108 "On the protection of the individual with regard to automatic data processing", which is the first internationally legally binding instrument in the field of personal data protection.

The term "personal data", referred to Convention 108²⁷⁶, is described as any information about the individual that makes it identifiable or identifiable. Also, Law 9887/2008 "On Personal Data Protection"²⁷⁷ provides and extends this definition as "any information about a natural person, identified or identifiable, directly or indirectly, in particular by reference to an identification number or one or more factors specific to his physical, physiological, mental, economic, cultural or social identity."

Regarding the innovations brought by GDPR as an act, we mention the effect of extraterritoriality²⁷⁸. This effect, which in itself constitutes a principle, makes the Regulation applicable to third countries not members of the European Union, including the Republic of Albania. "Transactions" of personal data towards the European Union, by countries that are not part of it or by international organizations, are needed for the expansion of international trade and international cooperation. This approach has brought new challenges and implications regarding the

²⁷² Law No. 9287, dated 7.10.2004 "On the Ratification of the Additional Protocol to the Convention; For the protection of individuals with regard to automatic processing of personal data by supervisory authorities.

²⁷³ The Treaty of Lisbon, 2009. Charter of Fundamental Rights of the European Union, Article 8, paragraph 1 - Everyone has the right to protection of his or her personal data.

²⁷⁴ Treaty of Lisbon, 2009. Treaty on the Functioning of the European Union, Article 16, paragraph 1 - Everyone has the right to the protection of personal data relating to him or her.

²⁷⁵ Constitution of Albania, Article 35, paragraph 1). No one shall be obliged, except as required by law, to disclose information relating to his person.

²⁷⁶ Convention 108, Article 2.

²⁷⁷ Law 9887/2008 "On protection of personal data", Article 3.

²⁷⁸ General Data Protection Regulation, in 2016, Article 3, territorial application.

protection of personal data. Even where personal data are transferred from the European Union to controllers, processors or other recipients in third countries and in international organizations, the level of protection of natural persons is ensured within the European Union by virtue of this Regulation, which does not no party shall cede.

Digitalization has transformed the economy and social relations, facilitated the free movement of personal data within the European Union and their circulation to third countries and international organizations, ensuring a high level of protection of personal data.

There are three "typical" situations²⁷⁹ in which personal data can be transferred to third countries:

1. Transfer on the basis of an adequate level of protection decision taken by the European Commission - The conformity assessment shall take into account the specific elements expressly provided for in Rule 45 paragraph 2 of the Regulation. A periodic review of this decision should be carried out at least every four years to keep the current existence of an adequate level of protection in check and in accordance with GDPR provisions. These Commission decisions should be published in the EU Official Journal and published on the European Commission's own website. While a particular site is recognized as suitable and prudent in the management of personal data, all transfers to that location after that time do not require specific authorization of any kind.

2. The transfer is subject to the adequate collateral. In this case, the data collector or data processor may only transfer personal data to a third party if they have provided adequate guarantees and provided that data subjects have access to how such data is managed and effective remedies and protection.

3. Corporate Assignment Rules / [(BCR) Binding Corporate Rule] Instrument that allows the transfer of free service to EU services may be possible to provide groups other than the so-called "Corporate Permit Rules" "They come from a set of contractual clauses that dictate the principles (in accordance with Regulation 679/2016 and ensuring an adequate level of activity) that you have the ability to provide for other companies.

Regarding the transfer of personal data from the European Union to Albania or vice versa, we note that in Albania this relationship is currently regulated by Law No. 9887/2008 "On Personal Data Protection", Articles 8 and 9 thereof, of Decision No.8, dated 31.10.2016 "On the determination of states with a sufficient level of protection of personal data"²⁸⁰, of the Commissioner for the Right to Information and Protection of Personal Data.

Concerning our country, so far, there is no European Commission decision specifying the adequacy or inadequacy of personal data protection. Consequently, the Republic of Albania regulates the part of the transfer of personal data through internal acts and law no.9887/2008 "On the protection of personal data".

Referring to GDPR, specifically its Article 44²⁸¹, as a regulation that extends to non-EU countries as well, from the perspective of the Albanian reality we state that the impact of this regulation will be inevitable on Albanian territory as long as personal data of European citizens are generated, collected, processed and administered.

Expanding Albania's trade and cooperation with EU countries, globalization and the proliferation of online platforms make the GDPR impact in Albania indispensable. With all the rights and obligations of this regulation for third countries such as Albania, the impact of GDPR on controllers or processors of personal data operating in this context remains to be seen.

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²⁷⁹<http://www.diritto24.ilsole24ore.com/art/avvocatoAffari/mercatiImpresa/2016-10-03/il-trasferimento-dati-personali-paesi-extra-ue-180336.php>

²⁸⁰https://www.idp.al/wp-content/uploads/2017/02/vendim_nr_8.pdf

²⁸¹General Data Protection Regulation, Article 44, *General Principles of Transfer*.

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Abbreviations List:

GDPR - General European Regulation on the Protection of Personal Data

EU- European Union

ECHR - European Convention on Human Rights

Charter - Charter of Fundamental Rights of the European Union

TFBE - Treaty on the Functioning of the European Union