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DEFINITION AND CLASSIFICATION OF PERSONAL DATA

Abstract. **Purpose**. The purpose of the article is to study approaches to defining the concept of personal data, methods and criteria for classifying personal data in order to identify possible ways to improve the legislation of Ukraine on protection of personal data. **Research methods**. In order to carry out the research, it was necessary to analyze the content of the concept of personal data, its constituent parts, and their combination as a whole by applying the method of analysis and synthesis. The inductive method was used to review the elements of the definition of personal data and personal data classification. The deductive method was employed to form conclusions about the criteria that affect the personal data classification. **Results**. The scientific approaches to defining personal data, as well as the definition of the relevant concept established in the normative legal acts of Ukraine and the European Union are analyzed in the article. Approaches to classifying personal data in scientific literature and the authors' justification of their positions regarding separation of certain personal data types were examined. Conclusions were made regarding the classification of personal data in accordance with the legislation of Ukraine and the legislation of the European Union. To improve legal regulation, certain changes concerning the definition of "personal data" and the classification of personal data were proposed to the legislation of Ukraine. **Conclusions**. Due to a rapid informatization of society and development of social relations in the field of personal data processing, there is an urgent need to update the national legislation and bring it in line with modern realities. One of the ways to ensure such an update is to improve the framework of concepts and categories that underlies the legislation of Ukraine on personal data protection and eliminate existing inconsistencies in the legislation.

Key words: personal data; definition of personal data; classification of personal data; identification; special personal data; sensitive personal data.

1. Introduction

Rapid progress in information technologies and digitalization create additional risks for individuals as personal data subjects. The categories of personal data to be collected and processed are constantly expanding. Information about an individual that is collected by websites, computer programs, or mobile applications often includes personal data that is particularly sensitive to the subjects, such as medical data, data about political or religious views, data about racial and ethnic origin, etc. The amount of collected personal data, especially sensitive data, is far from being always appropriate for the purpose of collection. The practice of collecting an unreasonably large amount of information about a person without their knowledge or informed consent is common. Moreover, there are frequent cases of personal data collection for their use for illegal purposes: embezzlement of another's property, deception, fraud, extortion and commission of other criminal or administrative offenses.

In view of the above, the issue of ensuring proper protection of personal data by the state is particularly relevant. One of the ways to ensure such protection is providing a clear definition of the term "personal data", determining its scope, as well as establishing clear criteria for dividing personal data into categories to provide enhanced protection for particularly sensitive categories of personal data. To ensure proper protection of personal data, the national legislation of Ukraine in the field of personal data protection should be improved, in particular, the Law of Ukraine "On Protection of Personal Data" and other laws and by-laws regulating public relations in the relevant field.

Research methods. Several scientific methods were used to fulfill the tasks and achieve the research purpose. Using the method of analysis and synthesis, the components of the concept of "personal data" and their combination in integrity were analyzed. The application of the inductive method made

it possible to study the constituent parts of the definition of personal data and personal data classifications. The deductive method contributed to the identification of trends that affect approaches to the classification of personal data and general criteria for such classification.

The structure of the research is determined by the tasks and purpose of the research. In order to find ways to improve the legislation of Ukraine concerning the definition and classification of personal data, it is considered necessary to first analyze the content and scope of the term "personal data". After considering the approaches to defining the term "personal data", it seems logical to move on to the issue of personal data classification, analyze the approaches to such classification developed by legal science and enshrined in the legislation of Ukraine and the European Union (EU). Based on the results of the conducted research, conclusions and proposals should be formed regarding the possibilities of improving the legislation of Ukraine in terms of determining personal data and establishing their classification.

2. Definition of personal data

The issue of defining personal data was considered by many domestic scientists. V.M. Bryzhko defines personal data as information about an identified person or a person who can be identified (Bryzhko, 2004, pp. 51, 90). M.I. Sayenko offers a broader and more detailed definition of personal data as data about a living person who is identified or can be identified on the basis of these data and additional information that may reach the person who controls the data, which contain an expression of attitude to this person and an indication of a certain purpose or plans regarding this person by the person who controls the data or another person (Sayenko, p. 103). The basis of these definitions is the concept of identification, understood in legal literature as establishing the identity of objects on the basis of certain signs (Golubovska, Shovkovy, Lefterova, Lazer-Pankiv, Shtychenko, Pysmenna et al., 2012).

Some scientists use other concepts than identification to define personal data. According to G.V. Vynohradova, personal data is a set of documented or publicly announced information about a natural person (Vynohradova, 2006). In our opinion, such definition deprives personal data of an important property - a possibility to identify a person, that is, establishing the identity of the data with the person to whom these data belong. Documented or publicly announced data may be unreliable, which makes it impossible to identify the person to whom they really belong. Identification of a person is a key property of personal data, which allows

establishing the ownership of certain personal data to a certain specific person and, accordingly, ensuring the protection of the rights of such a person to his/her personal data by the state. At the same time, it should be taken into account that the possibility of determining the relationship of data to an identified or identifiable person is not based on absolute, but on relative criteria, and today there is no objective standard for assessing this possibility according to legislation (Rupp, Grafenstein, 2024).

Summarizing the most common approaches to defining personal data in science, the following general trends can be identified: 1) personal data is most often defined as information or a set of information about a person; 2) personal data have the property of identification; 3) personal data always have a fixed form and are reflected in a specific source; 4) personal data is a non-exhaustive category; 5) information about a person acquires the legal status of personal data with the start of its processing (Tsyomenko, 2023).

In literature, other terms are sometimes used instead of the term "personal data". A.V. Paziuk uses the term "personalized information", considering it as a type of information that reflects both the individuality of a person and his/her universal human biological and social properties. The author considers the individualized character and the ability to identify a specific person using certain criteria to be the defining features of personalized information (Paziuk, 2004, p. 12). The approach that consists in equating the concept of personal data with the concept of confidential information about a person is also quite common in science (Marushchak, 2007). A similar approach was reflected in the Constitution of Ukraine. Article 32 of the Constitution of Ukraine establishes the basic rules for dealing with confidential information, prohibiting the collection, storage, use and distribution of confidential information about a person without his/her consent, except for a clearly defined and legally established set of exceptions (in the interests of national security, economic well-being and human rights) (Constitution of Ukraine, 1996). In its interpretation of the first and the second part of Article 32 of the Constitution of Ukraine, the Constitutional Court of Ukraine considers that confidential information about a natural person includes data on his/her nationality, education, marital status, religious beliefs, state of health, address, date and place of birth, information about property status. This list is not exhaustive, confidential information about a natural person can also include other personal data (Decision of the Constitutional Court

of Ukraine dated January 20, 2012 No. 2-rp/2012 in the case of the constitutional submission of the Zhashkiv District Council of Cherkasy Region regarding the official interpretation of the provisions of the first and the second part of Article 32, the second and the third part of Article 34 of the Constitution of Ukraine).

The normative definition of the term "personal data" is laid down in the Law of Ukraine "On Protection of Personal Data" and the Law of Ukraine "On Information". The Law of Ukraine "On Protection of Personal Data" defines personal data as information or a set of information about a natural person who is identified or can be specifically identified (Law of Ukraine "On Protection of Personal Data", 2010). The Law of Ukraine "On Information" provides the same definition of personal data, but a significant terminological difference is the use of the wording "Information about a natural person (personal data)" in the mentioned law (Law of Ukraine "On Information", 1992). Thus, in fact, according to the logic of the Law of Ukraine "On Information", the term "information about a natural person" and the term "personal data" have the same content. This leads to narrowing of the term "information about a natural person", since the Law of Ukraine "On Information" defines information as any information and/or data that can be stored on physical media or displayed in electronic form. Accordingly, the definition of the term "information about a natural person" should be broader than the definition of the term "personal data", because the first term refers to any information about a natural person, and the latter term refers exclusively to that information about a person by which a person can be identified. This leads to the fact that the essence of the concept is clarified with the help of a part of the same concept and a logical error called a "circle in the definition" occurs (Gurzhii, Petrytskyi, 2019).

The concept of personal data is also normatively established in European legislation. Convention No. 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data defines personal data as any information relating to an identified or identifiable individual (Convention No. 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data, 1981). Directive 95/46/EC "On the protection of individuals with regard to the processing of personal data and on the free movement of such data", which has long served as the main legislative act of the EU in the field of personal data protection, and Regulation (EU) 2016/679 of the European Parliament and of the Council

(hereinafter - the Regulation), which canceled the relevant directive and replaced it, contain similar definitions of personal data. According to the Regulation, personal data is any information relating to an identified or identifiable natural person. (Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation, 2016). Thus, European legislation recognizes the possibility of identifying a person as the main property of personal data. At the same time, Article 4 of the Regulation describes in detail when a person is considered to be identifiable and lists possible identifiers: name, identification number, location data, online identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of such a natural person.

It can be concluded from the above that when defining the concept of "personal data" in the Law of Ukraine "On Protection of Personal Data", the Ukrainian legislator generally followed the European experience. At the same time, the definition of personal data provided in the Law of Ukraine "On Personal Data Protection" is not fully consistent with the definition of personal data in the Law of Ukraine "On Information", since the latter definition does not comply with the rules of logic. The Ukrainian legislator should pay attention to the elimination of this discrepancy. In addition, it is considered appropriate to include in the Law of Ukraine "On Protection of Personal Data" an approximate list of information that allows identification of a person (identifiers), as was done in the Regulation.

3. Classification of personal data

The number of cases when personal data is processed is rapidly increasing in modern society. The list of personal data that is processed or may be processed is expanding every day. In the 20th century, the main categories of personal data processed were mostly data in directories, card files or databases on physical media, such as first and last name, identification number, residential address, telephone number. In the 21st century, with the development of technologies, the list of personal data processed on an ongoing basis expanded significantly. Bank card data, biometric data (face, voice, fingerprints), e-mail addresses, mobile phone numbers, online identifiers (cookie files), etc. are processed daily using various technical means, along with data on physical media. Such a complication of social relations in the field of processing personal data and the expansion of their scope requires to

divide personal data into categories to ensure an adequate level of protection of particularly sensitive data categories.

The issue of personal data classification is considered in scientific literature. A quite common approach is to distinguish three main categories of personal data: general, special and sensitive personal data. V.M. Rizak proposes to introduce just such a classification of personal data at the legislative level, enshrining the definition of the relevant categories of personal data in the Law of Ukraine "On Protection of Personal Data". While proposing definitions of general and sensitive personal data, the author does not provide a clear definition of the data that should be considered as special. With regard to special data, the author only notes that these are the data that do not belong to sensitive or general data, while the limits of circulation of these data are determined by the subject himself (Rizak, 2013, pp. 90–94). In our opinion, this classification does not provide sufficiently clear criteria for distinguishing between general and special personal data. The data subject is not always able to determine the limits of the processing of his/her data, and in the event of a change in legislation and expansion of state's access to certain personal data, such data may automatically move from the category of special to the category of general, without any influence, knowledge or consent of the subject. For example, clause 2 of the final and transitional provisions of the Law of Ukraine "On Amendments to the Law of Ukraine "On Protection of the Population from Infectious Diseases" on Prevention of the Spread of the Coronavirus Disease (COVID-19)" No. 555-IX allowed processing a set of personal data without individual's consent for the period of quarantine and within 30 days from the date of its cancellation for the purpose of countering the spread of COVID-19. The law attributed to such set of data, in particular, data on health status, place of hospitalization or self-isolation, surname, first name, patronymic, date of birth, place of residence, work, education (Law of Ukraine "On Amendments to the Law of Ukraine "On Protection of the Population from Infectious Diseases" on preventing the spread of the coronavirus disease (COVID-19)", 2020). Another example is the expansion of the list of personal data to be processed in connection with martial law. The Law of Ukraine "On Amendments to Certain Laws of Ukraine on Improving the Procedure for Processing and Using Data in State Registers for Military Registration and Acquiring War Veteran Status During Martial Law" expanded the list of processed personal data of recruits, conscripts and reservists. A number of data categories have been added to personal data that can be processed without the consent of such subjects, including numbers of means of communication, e-mail addresses, information about education and work experience in a specialty, information about the transfer of a person to the temporarily occupied territory of Ukraine, etc. (Law of Ukraine "On Amendments to Certain Laws of Ukraine on Improving the Procedure for Processing and Using Data in State Registers for Military Registration and Acquiring War Veteran Status During Martial Law", 2024).

There are also other criteria for personal data classification, such as classification based on human perception. According to this criterion, depending on the organ of perception, visual (symbolic, figurative) and acoustic personal data are distinguished, and depending on the way of perception - data that are directly perceived by the senses or data that requires special equipment for processing (Dmytrenko, 2010). Some scientists divide personal data into physical, physiological and relative, while physical and physiological data include gender, DNA, height, weight, blood composition, etc., and relative data include address, place of birth, ethnic origin, social and family status, political views, etc. (Kostruba, Schramm, 2019). A.M. Chernobai offers the division of personal data according to qualitative characteristics into actual data and data of an evaluative nature. In turn, factual data can be true or false, reliable or unreliable, current or outdated. Data of an evaluative nature are divided into substantiated and speculative (Chernobai, 2006). H.J. Schramm and A.V. Kostruba consider it expedient to establish the division of personal data into biological and social data. Under this classification, biological data includes data on gender, year of birth, state of health and other similar data. The authors attribute information about family status, children, education, employment, citizenship, religion, political views, credit history, criminal record and other similar data to social data (Kostruba, Schramm, 2019). Among foreign scientists, there is a proposal to make legal regulation more specific by dividing personal data depending on their properties into three categories: the ability to identify a person (identifiability), sensitivity, and the manner of data origin (Saglam, Nurse, Hodges, 2022).

Having read the positions presented in literature regarding personal data classification, it can be concluded that personal data is a complex category that can be classified simultaneously in several dimensions. Each of the classifications is based on certain characteristics and features of personal data and has certain goals.

In EU legislation, in addition to the general category of personal data, a separate category of personal data with a special level of protection is distinguished - "sensitive" data. Convention No. 108 attributes to this category data on racial origin, political, religious or other beliefs, as well as data related to health or sexual life. Automated processing of such data without legal safeguards is prohibited (Convention for the Protection of Individuals with regard to Automated Processing of Personal Data, 1981). The Regulation attributes to sensitive data about racial or ethnic origin, political opinions, religious or philosophical beliefs, membership in trade unions, genetic and biometric data, data related to health, sex life of an individual or his/her sexual orientation. Thus, one can observe a tendency to expand the list of data recognized as sensitive in Europe. As a general rule, processing of sensitive data is prohibited, except for the exemptions established in paragraph 2 of Article 9 of the Regulation. Such exemptions include explicit consent of the data subject, data processing for protection against claims, the need to fulfill duties in the field of employment, the need to protect the vital interests of the data subject, data processing for medical purposes, data processing for reasons of public interest, as well as for social, scientific, historical and statistical purposes (Regulation of the European Parliament and Council (EU) 2016/679 on the protection of natural persons in connection with 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), 2016).

Unlike the EU legislation, Ukrainian legislation does not clearly divide personal data into categories. At the same time, Article 7 of the Law of Ukraine "On Protection of Personal Data" identifies personal data, the processing of which is prohibited. Such data includes personal data on racial or ethnic origin, political, religious or philosophical beliefs, membership in political parties and trade unions, criminal convictions, data on health, sex life, biometric and genetic data. As it can be seen, in this part, the Ukrainian legislation follows the European approach of distinguishing categories of data that require special protection. The possibilities of processing such data are narrowed down to the legally established range of exceptions listed in Part 2 of Article 7 of the Law of Ukraine "On Protection of Personal Data". These exceptions mostly coincide with the exceptions set out in paragraph 2 of Article 9 of the Regulation.

Thus, based on the analysis of the provisions of the Law of Ukraine "On Protection of Personal Data", two main categories of personal data can be distinguished: 1) general

personal data - any information or a set of information about a natural person who is identified or can be specifically identified, except those related to special (sensitive) personal data; 2) special (sensitive) personal data - information or set of information about racial or ethnic origin, political, religious or philosophical beliefs, membership in political parties and trade unions, criminal convictions, data related to health, sex life, biometric or genetic data of a natural person by which he/her is identified or can be specifically identified. In our opinion, enshrining such a classification in the Law of Ukraine "On Protection of Personal Data" would make it possible to strengthen the degree of protection of sensitive personal data and bring the legislation of Ukraine in the field of personal data protection closer to the EU legislation in this part.

4. Conclusions

To ensure the protection of personal data, it is important to form the right approach to definition of personal data and establish a clear classification of personal data in the legislation. In order to improve the level of personal data protection, bring Ukrainian legislation in the field of personal data protection into compliance with EU standards, we offer to:

1. Expand the definition of personal data provided in the Law of Ukraine "On Protection of Personal Data", supplementing it with criteria that allow identification of a person. In this regard, the following definition of personal data should be enshrined in the law: "personal data - information or a set of information about a natural person who is identified or can be specifically identified; a natural person can be identified, in particular, by such identifiers as name, identification number, location data, online identifiers or by factors that determine the physical, physiological, genetic, mental, economic, social or cultural essence of such natural person."

2. Eliminate the inconsistency between the Law of Ukraine "On Protection of Personal Data" and the Law of Ukraine "On Information" in terms of the use of the concepts "personal data" and "information about a natural person" by replacing everywhere in the text of the Law of Ukraine "On Information" the term "information about natural person" with the term "personal data". Thus, in particular, Article 11 of the Law of Ukraine "On Information" will have the title "Personal data", and the definition given in part 1 of this article will be as follows: "Personal data - information or a set of information about a natural person who is identified or can be specifically identified".

3. Divide personal data into two categories: 1) general personal data; 2) special (sensitive)

personal data. Supplement the Law of Ukraine "On Protection of Personal Data" with the concepts of "general personal data" and "special (sensitive) personal data" and define these concepts.

The issue of optimal ways to integrate the updated conceptual and categorical apparatus into Ukrainian legislation, including secondary legal acts, requires further research.

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ВИЗНАЧЕННЯ ТА КЛАСИФІКАЦІЯ ПЕРСОНАЛЬНИХ ДАНИХ

Анотація. *Мета.* Метою статті є дослідження підходів до визначення поняття «персональні дані», способів та критеріїв класифікації персональних даних для виявлення можливих шляхів удосконалення законодавства України щодо захисту персональних даних. ***Методи дослідження.*** Для проведення дослідження необхідно було шляхом застосування методу аналізу та синтезу проаналізувати зміст поняття «персональні дані», його складові частини та поєднання їх в цілісності. Індуктивний метод було використано для розгляду елементів визначення персональних даних та класифікації персональних даних. Для формування висновків щодо критеріїв, які впливають на класифікацію персональних даних, було використано дедуктивний метод. ***Результати.*** У статті було проаналізовано розроблені в науці підходи до визначення поняття «персональні дані», а також закріплені в нормативно-правових актах України та Європейського Союзу визначення цього поняття. Досліджено підходи до класифікації персональних даних в науковій літературі, проаналізовано надане авторами обґрунтування їх позицій щодо виокремлення певних видів персональних даних. Зроблено висновки щодо класифікації персональних даних згідно законодавства України та законодавства Європейського Союзу. Запропоновано деякі зміни до законодавства України в частині визначення поняття «персональні дані» та класифікації персональних даних, спрямовані на вдосконалення правового регулювання. ***Висновки.*** В зв'язку з стрімкою інформатизацією суспільства та розвитком суспільних відносин в сфері обробки персональних даних, нагальною потребою є оновлення та приведення у відповідність до сучасних реалій національного законодавства. Одним з способів забезпечити таке оновлення є вдосконалення понятійно-категоріального апарату, що лежить в основі законодавства України щодо захисту персональних даних та усунення наявних неузгодженостей у законодавстві.

Ключові слова: персональні дані; визначення персональних даних; класифікація персональних даних; ідентифікація; спеціальні персональні дані; чутливі персональні дані.