

THE IMPORTANCE OF CONSTITUTIONAL CONTROL IN THE PROTECTION OF HUMAN RIGHTS AND PERSONAL DATA

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Abstract

Interpreting the 21st century, in which we live, from the perspective of world civilization, scientific literature describes it as a period of transition from one socio-cultural paradigm to another. Against this backdrop, personal data and its protection are becoming an important issue. An analysis of international acts shows that at present the main act regulating issues of personal data protection is the General Data Protection Regulation. It is no secret that today's increasingly widespread use of technology in many areas of everyday life and various professional activities creates the basis for the easy collection of personal data and expands the possibilities for its use in ways that undermine individual rights. For this reason, the protection of personal data has become an important element of human rights and freedoms and constitutional control of countries. Thus, the article examines the importance of constitutional supervision in the protection of both human rights and personal data.

Keywords: *constitutional review, personal data, constitutional review of countries, international law, constitutional justice, judicial constitutional review, protection of personal data, human rights and freedoms, primary judicial constitutional review.*

I. Introduction

The legal status of an individual plays a key role in modern society, as it determines the rights, responsibilities, and guarantees that a person has before the law and the state. The importance of this status is evident in all areas of human life, from the right to life to freedom of conscience. The status of an individual is formed on the basis of the constitution, laws and other normative acts that ensure legal protection and the prevention of arbitrariness on the part of authorities or other entities. Respect for human dignity and fundamental rights is the source of this status, which determines the interaction of the individual with legal institutions and his position in society. An effective justice system that facilitates the prompt and fair resolution of disputes plays a key role in ensuring the constitutional rights of citizens.

Thus, the constitutional and legal status of an individual helps to ensure fair and equal conditions for the development of the individual, and also contributes to the strengthening of democratic and legal principles in society. The development of the constitutional and legal status of an individual is an important process in modern society. Over time, taking into account changing social relations and values, it is necessary to constantly improve the legal framework for individuals and their rights. In this context, there is a need to consider the prospects for the development of the constitutional and legal status of the individual.

The prospects for the development of the legal status of an individual are inextricably linked with the dynamics of social life and the changing needs of society. In the modern world, we are witnessing the rapid development of technology and

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information technology, which entails the need to improve legislation in terms of protecting individual rights and freedoms. Given the changing reality, one area of promising development could be strengthening guarantees of personal data confidentiality to ensure citizens' privacy [9, p. 82].

The Belarusian scientist notes that, for a long time, the right to the protection of personal data was considered exclusively as part of the right to protection from unlawful interference in private life and was not distinguished as an independent right, which was due to different approaches to the relationship between the concepts of "personal data" and "private life" [4, p. 22].

The first approach is based on the fact that "privacy information" and "personal data" are related as general and particular. However, according to some experts, privacy information should be considered as a broader concept than personal data, since the latter is only information that allows one to identify an individual.

Proponents of the second approach believe that "personal data" is a broader concept. This is confirmed by the fact that they also include information about a person's professional and social activities in personal data, while information about private life is limited to personal and family communications.

In general, personal data is heterogeneous. In their structure, it is necessary to highlight not only identifying information, but also that which characterizes moral and business qualities.

The third group of researchers believes that the categories under consideration are not identical and are not related to each other in any way; they are independent and only in some cases do their contents intersect. In their view, information about a person's private life identifies the individual, reflecting their private activities and thus constitutes personal data. However, there is a large volume of personal data that does not constitute information about a person's private life, thus creating an independent institution requiring appropriate legal protection.

Thus, there is currently a tendency to identify an independent human right – the right to the protection of personal data.

II. The right to the protection of personal data and the reasons that make this right necessary

Protection of personal data is a fundamental human right. According to Turkish scientists, the right to the protection of personal data is closely related to the right to privacy and protection of private life [10, p. 23]. In most countries, the right to privacy is defined in relation to personal data, and the connection between these two rights is presented as the protection of personal data being a type of right to privacy that contains its own unique characteristics.

Confidentiality of private life is an important tool in protecting human personality. The protection of personal data is one of the rights that real persons have, which is closely tied to their personality and is solely due to being human. The right to private life, including personal data, includes the confidentiality of information and data related to oneself, one's family and one's profession that one does not want to be learned by others; it can be asserted against anyone by the persons who own these data [1, p. 634-635].

The right to protection of personal data is aimed at protecting not the "data" itself, but the "persons" to whom these data are related, regardless of the persons to whom they are related. In this regard, the starting point of the protection of personal data is the desire to protect individuals.

“Privacy” is a fairly broad concept. The development of social relations has led to a semantic change in this concept. In the generally accepted understanding, privacy includes the right to control information, the absence of legal regulation of personal life, a ban on the use of information obtained illegally, and a ban on the collection and storage of information. “Privacy” includes personal data:

1) Firstly, personal data must be recorded on a tangible medium, but information containing details of private life is not required to be so.

2) Secondly, when personal information is anonymized, the data will become meaningless, and personal data can be anonymized by direct instruction of the law. This approach is based on the unity of personal data and information about the individual [11, p. 126].

Personal data is an element that falls within the concept of information about private life. Proponents of the second approach view personal data and information containing private information as categories that are interrelated in content but dissimilar in scope.

In our view, privacy and information about privacy are broader concepts than personal data. At the same time, information about private life is essentially an “extended version” of personal data. Thus, personal data are the object of constitutional and legal protection, despite the impossibility of drawing a clear line between information about the private life of an individual, which is personal data.

The importance of protecting personal data has increased with the developments in information systems and the increase in data flow in electronic environment. Today, with the development of technological possibilities, surveillance on individuals is much greater than before. It is seen that personal data has become a commercial commodity today.

The feeling of keeping one's personal information private, which has existed almost throughout human history, has given rise to the right to demand that personal information be kept confidential, as awareness of fundamental rights and freedoms has increased over the years. The ease of obtaining personal data with developing technology has pushed countries to become more aware of this issue and take precautions.

With the increasing need for data protection, the European Union General Data Protection Regulation regarding the protection of personal data came into force in the European Union in May 2018 [7, p. 6].

Technological developments are among the primary factors that trigger the need for the protection of personal data. One of the greatest opportunities that computer and internet technology has provided to humankind is the ability to access as much data as possible in the shortest possible time and in the fastest way. Especially thanks to the internet, information can be made available to all internet users in a very short time. Once information about a person is available on the internet, billions of people can access it. This situation has revealed the need to protect personal data against dangers and threats occurring in the internet age. Due to all these abuses, risks, dangers and the possible negative consequences and concerns that may arise from them, legal regulations have been made to protect personal data [10, p. 20-21].

Let us note again that, with the advent of the era of widespread digitalization and the rapid growth of internet technologies, protecting individual rights and preventing the unauthorized collection of personal data have become challenges of the utmost importance. There is an urgent need for effective mechanisms to respond to abuses related to the processing and use of personal information. Expanding access to personal data has transformed the protection of personal information into one of the most pressing issues in modern legal regulation.

The right to privacy in correspondence, telephone conversations and other communications is directly related to the protection of personal data, since communications typically contain a large amount of personal information. In addition to the content of messages, correspondence generates metadata – information about the sender and recipient, namely: time of communication via calls/messages, IP addresses, geographic location, etc. An email address can also be considered personal data. This metadata is in itself personal data and allows one to identify a person, track their movements, and establish their social circle. Guaranteeing the confidentiality of communications implies the protection of relevant data and ensures the inviolability of privacy [5, p. 271].

Thus, constitutional guarantees for the protection of personal data in the digital environment still exist and are implemented through a set of interrelated rights. However, these guarantees require constant attention and improvement.

III. The importance of constitutional oversight in the protection of personal data

As we mentioned above, with the development of information technologies, the concept of “data” has gained great importance, especially in terms of providing goods and services. The need for data and the processing of personal data by various individuals, institutions and organizations have become a part of daily life. Due to these developments, the importance of personal data and the right to privacy has begun to be felt more closely, and as a result, the need to process personal data, especially within the framework of privacy, has arisen. In other words, it would be possible to say that protecting our privacy is equivalent to protecting our personality. At this point, it should be noted that although the concept of privacy constitutes our identity, privacy is a phenomenon whose value is understood only when it is lost. People truly realize its importance when their privacy is violated.

We consider it appropriate to consider in more detail that the protection of personal data belonging to each person is a constitutionally defined right:

1) The most natural consequence of a right being recognized by the Constitution is that that right is included in the constitutionality block. First of all, let us note that what should be understood from the constitutionality block is the group of standard norms that includes the general principles of law and international agreements, along with the constitutional text. In this context, in accordance with the hierarchy of norms, laws and other regulatory acts cannot contradict the Constitution. If the action that constitutes a violation of a constitutional right is a law, it can be annulled by the Constitutional Court, and any other action of the administration can be annulled by the Council of State and other administrative judicial authorities.

2) It is not possible to invalidate by law a right recognized by the Constitution. A constitutional right can only be abolished by an amendment to the Constitution. Amending the constitution requires a much more difficult and complex procedure. Therefore, the recognition of a right by the Constitution provides an important guarantee for those who are entitled to this right. However, the recognition of a right by the Constitution does not mean that the legislator cannot make any regulations on that subject.

3) The Constitution of the Republic of Azerbaijan, as well as the member states of the Organization of Turkic-Speaking States, has acquired significant importance in terms of the creation of new institutions specialized for the comprehensive protection of human rights [3]. As we know, legislation in the field of personal data consists of the Constitution of the Republic of Azerbaijan, international treaties to which our country is a party, the

Law of the Republic of Azerbaijan on Personal Data, as well as other regulatory legal acts. Thus, according to the legislation of the Republic of Azerbaijan, the right to demand the protection of personal data granted to citizens by the Constitution is guaranteed precisely by the Constitution:

a) The limitation must be made by law: It is not possible to limit the right to the protection of personal data recognized in the Constitution by a statute, regulation or any other administrative act.

b) The limitation must be made based on the special limitation reasons provided in the Constitution: Experts cite as specific reasons for the restriction the reasons included in the articles of the Constitution, which regulate fundamental rights and freedoms and specify each right and freedom separately according to its essence.

Every fundamental right and freedom is subject to objective limitations arising from the nature of that right. This also applies to the right to demand the protection of personal data [12, p. 31].

c) The limitation must comply with the principle of proportionality: When limiting the right to protection of personal data, the principle of proportionality must be observed. In order to accept that the restrictions on fundamental rights and freedoms are in compliance with the principle of proportionality, the restrictions must meet certain conditions: First of all, the means used must be suitable for achieving the purpose of the restriction; moreover, the means used must be necessary or even mandatory for the purpose of the restriction; finally, there must be a proportionate ratio between the means used and the intended purpose.

The adequacy of the interpretation of personal data in the current system of legal regulation can be assessed by referring also to judicial practice. When discussing the judicial practice of modern world states regarding the protection of personal data, it should be noted that their Constitutional Courts mainly refer to the existing practice reflected in the decisions of the European Court of Human Rights [6, p. 281].

In modern world countries, Constitutional courts are now also taking control of the issue of data protection of legal entities. It is noted in scientific literature that the constitution states that everyone has the right to protection of their personal data. From this point of view, no distinction should be made between individuals and legal entities in terms of personal data protection. This decision shows that the right to request the protection of personal data is not limited to natural persons, but can also be applied to legal entities when appropriate conditions are met [2, p. 365].

In most states, this control is exercised by the Constitutional Court through both normative control and individual appeals. According to information provided by constitutional courts, the development of information technology creates the basis for the collection, analysis, and transmission of large volumes of personal data of individuals and legal entities. This makes personal data valuable for commercial enterprises. Naturally, the need to protect personal data at the highest level against the risk of this data gaining value being seized by terrorist and criminal organizations arises [8, p. 80].

The need to protect some personal data more carefully has led to the inclusion of data such as a person's racial origin, health data or political views, which are specifically regulated and protected, under the category of sensitive personal data. The reason why some data are considered sensitive data due to their special characteristics is that, if disseminated, these data may cause more harm to personal rights than other personal data.

When the Constitutional Court mentions sensitive personal data in its decisions, it emphasizes that the right to demand the protection of these data should not be limited and that the right should not be interfered with. Indeed, in its relevant decision, the Court emphasized that the right to demand the protection of personal data should not, as a rule, be restricted or interfered with in cases where sensitive personal data is involved, and stated that the safeguards should be stricter regarding sensitive personal data.

Thus, the principle of legality in the protection of personal data belonging to both natural and legal persons is one of the constitutional guarantees that ensures the proper implementation of this right. The Constitution, by highlighting the principle of legality, has made it mandatory for regulations in this area to be made by law.

According to this principle, personal data can only be processed in cases stipulated by law or with the express consent of the person. At the same time, the principles and procedures regarding the protection of personal data are also regulated by law. In this regard, it is not possible for the administration to take any action or regulation *ex officio* regarding the processing of personal data and the protection of these data.

IV. Conclusion

In conclusion, it is possible to determine the relationship between the totality of rights, freedoms and obligations of a person and citizen, which form an integral system, with internal isolated subsystems. The constitutional and legal status of the individual is a fundamental element of a democratic society, creating conditions for the free development of the individual and full participation in public relations. Ultimately, prospects for the development of the legal status of individuals include the improvement of legislation on the protection of personal data, the expansion of the range of subjects of rights and obligations, the strengthening of the fundamental rights and freedoms of citizens, and the development of regulatory acts in the field of digital security. These areas need to be constantly taken into account and improved in the context of a changing social and technological environment.

Personal data protection is a key element in the digitalization of various processes, the downside of which has been the emergence of new fraudulent schemes. Determining the legal nature of personal data allows us to determine the importance of their protection. The increase in cyberattacks has led to the need to protect users' personal information. In addition to proper legal regulation, the problem should be covered more frequently in the media in order to warn citizens and shape their worldview accordingly.

In conclusion, it should be noted that ensuring reliable protection of personal data in the digital environment is a key factor in preserving democratic values, protecting the rights and freedoms of citizens, and developing trust in digital technologies. Only a comprehensive and systematic approach, based on the continuous improvement of legislation, technological development, and the enhancement of legal culture, will ensure the effective protection of personal data in the context of the continuous digital transformation of society.

So, our research shows that, from the point of view of personal data protection, despite the constitutional guarantees inherent in modern world states and the achievement of strong constitutional guarantees in this area, some problems are encountered in their implementation. This is a complex issue covering legal, technological and social aspects:

1) First, it's worth considering that internet users often voluntarily publish large amounts of information about themselves on social media, which blurs the boundaries of privacy and creates difficulties in determining what information should be protected. The data obtained, in turn, can be used for targeted advertising and other purposes that do not meet user expectations.

2) Secondly, the application of existing data protection regulations in the digital environment may be challenging due to the complexity of technologies and the cross-border nature of the digital environment. Control and supervisory bodies do not always have sufficient resources and powers to effectively monitor compliance with legislation in this area. However, judicial practice in cases of violation of this right is not yet sufficiently developed.

3) Third, many companies and organizations do not take sufficient measures to protect personal data from unauthorized access, use, disclosure, modification and destruction. Modern data collection and processing technologies (e.g., Big Data, artificial intelligence) make it possible to collect and analyze vast amounts of information, identify hidden patterns, and make predictions about user behavior, creating risks to the protection of personal data.

In conclusion, it is possible to determine the relationship between the totality of rights, freedoms and obligations of a person and citizen, which form an integral system, with internal isolated subsystems. The constitutional and legal status of the individual is a fundamental element of a democratic society, creating conditions for the free development of the individual and full participation in public relations. Ultimately, prospects for the development of the legal status of individuals include the improvement of legislation on the protection of personal data, the expansion of the range of subjects of rights and obligations, the strengthening of the fundamental rights and freedoms of citizens, and the development of regulatory acts in the field of digital security. These areas need to be constantly taken into account and improved in the context of a changing social and technological environment.

So, based on the results of our research, we can say that the increasing importance of data in the era of high-speed information flow brings with it increasing risks along with digital transformation. Today, government and private organizations collect, store, process and transmit significant amounts of data about individuals every day. Developing technology enables personal data to be shared across numerous platforms and to spread rapidly and unlimitedly around the world. This situation increases the risk of individuals losing control over their personal data and being unable to prevent these data from becoming a threat to them. In light of these realities, it is becoming increasingly important for the state and judicial mechanisms to take action to protect fundamental rights and freedoms and to establish the necessary legal and institutional framework.

Constitutional Court decisions show that personal data needs to be protected at the highest level. In line with this need, the right to protection of personal data, which is regulated by an independent law, must be addressed with its evolving and diversifying dimensions.

In the light of national and international legal regulations and the reviewed Constitutional Court decisions, it should be stated that the protection of personal data is, in one sense, the protection of human dignity. In order to protect human dignity, the right to privacy and the protection of privacy in relation to this right are of great importance. The state must pay careful attention to the protection and development of the material and spiritual integrity of the individual, within the scope of both its positive and negative obligations. The Constitutional Court should continue to serve both the protection of

fundamental rights and to guide legislation with its decisions based on international law and human rights in order to develop fundamental rights and freedoms.

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