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The right to personal data at the present stage of society development is of paramount importance. This article reflects some results of the conducted comparative legal analysis on the issues of legal regulation and protection of personal data in different legal practices: the United States, the European Union, Russia and Kazakhstan. It considers the main approaches to personal data protection and their reflection in the national legislation of some countries, as well as analyzes the legal provisions on the system of personal data protection in Kazakhstan and the essence of recent changes in the legislation on personal data protection in our country. Personal data in the world legal practice are considered as an integral element of fundamental rights and freedoms of man and citizen along with the inviolability of the person, therefore, the issues of their protection are given quite careful attention. The conducted analysis allows us to conclude that the methods of personal data protection in different countries are different. In particular, it should be noted that today citizens of the European Union and the United States have a wider set of tools and ways, by which they can ensure their right to protection of personal data. The Kazakhstani legislator needs to take a more detailed approach to the issues of legal regulation and protection of personal data.

Keywords: personal data, law, protection of rights, legal practice, national legislation.
Introduction

The legislation in the field of personal data protection (hereinafter – PD) has a relatively short history of formation and development. The formation of the legal regulation of this sphere starts from the late seventies of the twentieth century. If we talk about the experience of development of full-fledged normative legal acts, which were to regulate the protection of personal data during automated information processing, then the time interval is counted only a few decades. The European Union and the United States are undoubtedly the pioneers in the field of developing a framework for the protection and circulation of personal data.

Personal data can be safely defined as a kind of «currency» in the global economy. And this is indeed true, because today the collection, analysis, movement and storage of personal data are of great economic importance all over the world. Therefore, it is quite reasonable to raise the issue of personal data protection.

The issues of personal data protection in the world legal practice are considered as an integral element of fundamental human and civil rights and freedoms along with personal inviolability. However, the methods of personal data protection vary from country to country.

Materials and methods

The methodological basis of the study was based on the following general scientific methods: synthesis, analysis, induction, deduction; general conclusion, transition from abstraction to precision; theoretical methods, including the compilation of actual searches (in comparable statistical data).

Results and discussion

The approbated result of the conducted comparative legal analysis on personal data protection issues allows to highlight the main aspects of this direction:

1) The United States, like many other countries in the world, has its own practice of protecting confidential information, which is characterized by the existence of a privacy law and privacy commissioners. It is known that the general legislation in the United States, for the most part, is aimed at regulating the activity of public authorities within the structure of executive power, in order to create a transparent mechanism of management and accountability to the society; 2) Personal data protection in the European Union is considered as an integral element of fundamental human and civil rights and freedoms, along with the inviolability of the person. The right of citizens to personal data protection is guaranteed by the EU founding treaties; 3) The process of formation of the legal institution of personal data in the Russian Federation started much later than in Europe and the USA. At the same time, it should be noted that there are serious problems in the legislative regulation of this sphere. To some extent, this is due to the relative novelty of the current law on personal data, as well as the fact that amendments to it simply do not keep up
with the development of modern technologies; 4) Despite the fact that the issue of legal regulation of personal data collection and processing has recently been the subject of special attention worldwide, a culture of respectful attitude towards personal data has not yet developed in Kazakhstan. Many employers, business leaders, especially in the retail sector, and other owners of personal data databases are not even aware of their responsibilities in this area, and individuals whose data have been recorded in these databases are not aware of their rights; 5) Starting from 2020, Kazakhstan is rapidly strengthening the protection of personal data. Kazakhstan is rapidly strengthening the protection of personal data at the legislative level, mainly by adapting the GDPR experience. Recently, the current Law on Personal Data and its Protection and related regulations have been significantly amended to strengthen the protection of personal data.

Today in the Republic of Kazakhstan the protection of personal data is of particular importance. This situation is determined by the fact that on the one hand, efforts are made in Kazakhstan to create legislation in this area, but the existing level is still insufficient. Most of the processes are formalized, the society is not sufficiently informed about its rights and opportunities for data protection.

For comparison, let us consider the experience of the USA and the European Union, where the issues of human rights protection have been realized at the level of legislation since 1980. Also, for comparison let us take the Russian Federation from the CIS countries.

**United States**

Unlike most leading European countries, the United States of America still has no general (federal) legislation on personal data. In case of violation of the rights of personal data subjects, the provisions of the Constitution and the practice of case law prevailing in the United States are applied. The general legislation in the United States, for the most part, is aimed at regulating the activities of government agencies, which are part of the executive branch, in order to create a transparent mechanism of governance and accountability to the public [1].

Another distinctive feature of data protection in the United States is the so-called «umbrella» approach, which ensures adequate data protection in certain areas (industries; in the performance of certain contracts), which is based on the use of general legislation, sectoral bylaws and recommendations on information protection, expressed, inter alia, in examples of contracts.

The following mechanism was used to combat leaks of confidential information: each state adopts a law obliging companies to report any information leaks. By 2008, such laws were adopted in almost all states of the USA, but such measures failed to really reduce the number of violations, as evidenced by the statistics of confidential information leaks for 2008.
NIST Special Publication 800-122 is another step toward centralized regulation of relations related to the processing of citizens’ personal information. This document contains general recommendations on the protection of personal data and refers to numerous normative-legal acts of the U.S. domestic legislation, which reflect various organizational, technical, legal aspects of personal data protection.

Perhaps, after the entry into force of NIST Special Publication 800-122, the order of personal data protection in the U.S. will be clearer, however, there are still many questions about the practical application of this mechanism [1].

**European Union countries**

The right of citizens to protection of personal data is guaranteed by the constituent treaties of the European Union (hereinafter - EU). Initially, the basis of the EU legal framework in this area were international instruments - the OECD Framework Principles for the Protection of Privacy and Transborder Transmission of Personal Data of 1980 and the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, opened for signature in 1981, which for the first time in the world legal practice singled out as an object of protection the right of citizens to protection of their personal data [2].

In 1995, the European Union adopted Directive No. 95/46/EC on the protection of individuals with regard to the processing of personal data. However, companies mostly ignored it. As a result, on May 25, 2018, this document was replaced by the General Data Protection Regulation (General Data Protection Regulation or GDPR). An important difference of the GDPR is its extraterritorial principle - the Regulation applies to all companies processing personal data of EU residents and citizens, regardless of the location of such a company [2].

GDPR is a crucial piece of legislation that significantly increases the level of personal data protection in the EU and beyond. It requires very careful study and compliance. The reform brings clarity and consistency to the rules that must be applied to data protection. It also restores user-consumer trust, allowing businesses to maximize opportunities in the European Digital Single Market.

The regulations apply in all EU countries with the same legal force as if they were local laws. At the same time, EU member states must adopt their own laws to implement GDPR, but they may differ. Say, under the GDPR, the age of consent for processing personal data is set at 16, but each state can set its own. This is done in order to ensure that the processes within a state comply with the uniform requirements set in the EU [2].

As a result, each European country, based on its national peculiarities and problems, emphasized certain conditions, and itself determines the severity of punishment for violations.
Russia

In the Russian Federation the process of formation of the personal data institution started much later than in the EU and the USA. The starting point is the ratification in 2005 of the 1981 Council of Europe Convention «For the Protection of Individuals with regard to Automatic Processing of Personal Data». Currently, in addition to the Federal Law of 27.07.2006 No. 152-FZ (ed. 03.07.2016) «On Personal Data», the considered legal institution is also regulated by federal laws defining the cases, technical characteristics and features of protection, processing, control in the field of personal data. Federal and territorial executive authorities on the basis of and within their powers may adopt regulatory legal acts on specific issues related to the processing of personal data and other actions [3].

The analysis of Russian legislation in the field of legal regulation of personal data allows us to conclude that the current legislation needs significant improvement. There are several groups of problems in the sphere of personal data protection: legal, organizational and financial.

Legal problems arose due to the ambiguity of the provisions of the federal law on personal data protection, which are interpreted differently by state legislative and executive authorities and operators. Among other things, this refers to the very concept of «personal data», the place of personal data in the system of information of limited access, etc. [4, p. 14; 5, P. 120–125].

Organizational problems are caused by the insufficient level of organization of personal data collection, storage, protection at the enterprises that do not have financial means for this purpose. Usually, financial and organizational problems are interrelated. The federal law «On Personal Data» considers the problem of personal data protection only from the point of view of data processing.

Speaking about the development of Russian legislation, it should be noted that the state is obliged to improve legal regulation in the field of personal data processing and protection. However, this does not mean that only the state should solve these problems. The public, as well as specialists in the field of law and information security should also take an active part in the development of proposals to improve the legislation in this area. In addition, citizens themselves should strive to ensure the security of their personal data by not providing such information, for example, in social networks and Internet resources. Interaction between the state and citizens, increasing the level of legal literacy of the population, as well as the responsibility of citizens when signing consent and other forms of personal data provision will allow to qualitatively improve the current legislation and solve the existing problems [6, p. 136–138].
Kazakhstan.

On November 25, 2013, the Law of the Republic of Kazakhstan «On Personal Data and Their Protection» No. 94-V (the «Law») came into force. The Law significantly expanded the legal and regulatory material governing social relations in the field of collection, processing and protection of personal data and filled a number of gaps that occurred in the legislation on personal data before its adoption. And on July 7, 2020, amendments and additions to the Law on personal data on the regulation of digital technologies came into force in Kazakhstan. Among the main amendments and additions to the issues of personal data protection are the following.

1. Development and approval of the rules of personal data collection, processing. Previously, the collection, processing of personal data was carried out on the basis of the Law on personal data. Now the Rules will be approved by the Authorized Body in the form of a by-law.

2. The Law on Personal Data introduced a new concept of «personal data security service». By means of this service will be provided information interaction of owners and/or operators with the subject of personal data. Thus, this service will allow the subject to provide (withdraw) consent to the collection, processing of personal data and/or their transfer to third parties. That is, this service will be a new form of providing (withdrawing) consent in addition to the previously provided (written, in the form of an electronic document or with the application of elements of protective actions that do not contradict the legislation of the Republic of Kazakhstan).

3. The Law on Personal Data introduced a new concept of «voluntary cyber insurance». The purpose of voluntary cyber insurance is to compensate property damage caused to the subject, owner, operator, third party, in accordance with the legislation of the Republic of Kazakhstan on insurance and insurance activities. Types, conditions and procedure of voluntary cyber insurance will be determined by agreement of the parties.

4. In case the owner and/or operator are legal entities, they are obliged to appoint a person responsible for the organization of personal data processing (this requirement does not apply to the activity of courts). Such person shall have, inter alia, the following obligations: to exercise internal control over compliance with the legislation on personal data protection; to bring to the attention of employees the provisions of the legislation on personal data protection; to exercise control over the reception and processing of requests of subjects or their legal representatives. It should be noted that a similar position of Data Protection Officer (DPO) was introduced in 2018 in Europe with the adoption of the General Data Protection Regulation (GDPR).
5 The personal data subject or his/her legal representative has the right at any time to demand the exclusion of the subject’s personal data from publicly available sources of personal data, if the collection and processing of the data was carried out with violations. Personal data may also be excluded from publicly available sources by court decision or other authorized state bodies.

Since July 17, 2020, an important addition [7] to the Law on Personal Data has entered into legal force, which establishes the provision that the collection, processing of personal data will be carried out without the consent of the subject or his/her legal representative in the case of receipt of personal data by state revenue authorities for tax administration and/or information control from individuals and legal entities in accordance with the laws of the Republic of Kazakhstan.

At the same time, the Code of Administrative Offenses [8] in terms of liability for unlawful collection and/or processing of personal data was amended: now the liability of guilty persons is limited to a fine; confiscation of objects and/or instruments of administrative offense is excluded [9].

It should also be noted that in our country has begun to develop judicial practice on bringing to responsibility for non-compliance with personal data protection measures. Thus, in Kazakhstan, a large bank was fined in 2021, and in 2022 – a telecommunications operator. For all the years of existence of the legislation on personal data protection in Kazakhstan, these are the first cases when companies were held liable for violation of personal data protection requirements as a result of an inspection [10].

Despite the fact that the amount of the fine in both cases is no more than 100 MRP (291,700 tenge at the time of the offenses, approximately 630 USD), such decisions are indicative that the Ministry of Digital Development, Innovation and Aerospace Industry of the Republic of Kazakhstan is taking real steps to ensure the protection of personal data. Therefore, companies should take the protection of personal data very seriously to avoid legal and reputational risks.

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Conclusions
Thus, Kazakhstan is actively engaged in the development of legal means of personal data protection. And in doing so, in addition to national, regional and international laws on personal data protection, it is guided by the guidelines and provisions that have been developed by countries and intergovernmental organizations and implemented by public and private entities around the world [11, p. 50].
СПИСОК ИСПОЛЬЗОВАННЫХ ИСТОЧНИКОВ

1 Защита персональных данных за рубежом: США. [Электронный ресурс]. – URL: http://www.weta.ru/privacy-comments-us-law-analysis.php#:~:text=%D0%92%20%D0%BE%D1%82%D0%BB%D0%B%20%D0%A1%D0%A8%D0%90.

2 Защита персональных данных в отдельных странах ЕС: анализ отличий национального законодательства от GDPR. URL: https://habr.com/ru/company/digitalrightscenter/blog/680484/.


4 Петрыкина, Н. И. Правовое регулирование оборота персональных данных. Теория и практика: учеб. – М. 2013. – 112 с.


7 Закон РК «О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам ипотечных займов в иностранной валюте, совершенствования регулирования субъектов рынка платежных услуг, всеобщего декларирования и восстановления экономического роста» от 3 июля 2020 г. № 359-VI.

8 Кодекс Республики Казахстан об административных правонарушениях от 5 июля 2014 года № 235-V (с изменениями и дополнениями по состоянию на 12.09.2022 г.).


REFERENCES

%D0%BE%D1%82%D0%BB%D0%%20%D0%A1%D0%A8%20%D0%90.


8 Kodeks Respubliki Kazahstan ob administrativnyh pravonarusheniyah ot 5 iyulya 2014 goda № 235-V (s izmeneniyami i dopolneniyami po sostoyaniyu na 12.09.2022 g.) [Code of the Republic of Kazakhstan on Administrative Offenses dated July 5, 2014 No. 235-V (as amended and supplemented as of September 12, 2022)].


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ЖЕКЕ ДЕРЕКТЕРДІ ҚОРҒАУ ТУРАЛЫ ЗАНДЫ АҚПАРАТ: АҚШ, ЕУРОПАЛЫҚ ОДАҚ, РЕСЕЙ ЖӘНЕ ҚАЗАҚСТАННЫҢ ЗАНДЫҚ ТӘЖІРИБЕСІН ТАЛДАУ

Бул зерттеуді Қазақстан Республикасы Фылын жеңе жеңіл білім міністрлігінің Фылын комитеті (грант № AP19680399) қаржыландырды.

Қоғам дамуының қазіргі кезеңінде жеқе деректерге құқық басты мәнге ық. Бул мақалада әртурлі құқықтық тәжірибеде: АҚШ, Еуропалық Одақ, Ресей жеңе Қазақстандағы жеқе дерекстерді құқықтық реттеу жеңе қоргау қосалқылары бойынша салыстырмалы құқықтық тәлдаудың қайырмен құрылыс пәдограмын қорсатылады. Ол жеқе дерекстерді қоргаудың негізігі тәсілдерін жеңе олардың қайырмен құрылыс кейібір елдерге ұлттық қаңқаламдық қорсатылған зерттеуді, сондай-ақ Қазақстандағы жеқе дерекстерді қоргау құйысі туралы
куқықтық ережелерді құқықтары мен бостандықтарының құрамдас элементі ретінде қарастырылады, сондықтан оларды қорғау құқықтары мен бостандықтарының құрамдас элементі ретінде қарастырылады.

Талдау әр түрлі елдерде жеке деректерді қорғаудың әртүрлі әдістері қолданылатыны туралы қорытынды жасауға мүмкіндік береді. Адам айтқанда, бұға Еуропалық Одақ пен Америка Штаттарының азаматтары жеке деректерді қорғау құқығын қамтамасыз ететін құралдар мен әдістердің құрылысынан де екенін атап откен жоқ. Қазақстандық заң шығаруышы дербес деректерді құқықтық реттеу құқығын қамтамасыз ететін құралдар мен азаматтарына жатады.

Қілті сөздер: жеке деректер, құқық, құқықтары мен бостандықтары құрамдас элементі, қорғау құқығы, заң тәжірибесі, ұлттық заңнама

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законодательстве некоторых стран, а также проанализированы правовые положения о системе защиты персональных данных в Казахстане и сущность последних изменений в законодательстве о защите персональных данных в нашей стране. Персональные данные в мировой юридической практике рассматриваются в качестве неотъемлемого элемента фундаментальных прав и свобод человека и гражданина наряду с неприкосновенностью личности, поэтому вопросам их защиты уделяется достаточно тщательное внимание. Проведенный анализ позволяет сделать вывод о том, что способы защиты персональных данных в разных странах применяются разные. В том числе следует отметить, что на сегодняшний день граждане Евросоюза и США обладают более широким набором инструментов и способов, которыми они могут обеспечить свое право на защиту персональных данных. Казахстанскому законодателю необходимо более детально подойти к вопросам правовой регламентации и защиты персональных данных.

Ключевые слова: персональные данные, закон, защита права, юридическая практика, национальное законодательство.
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