

Scope of Personal Data Processing in Legal Practice

A lawyer processes a wide range of information in the course of professional activities, often involving a high likelihood of accessing personal data. In many cases, this includes special categories of personal data, requiring the lawyer to exercise heightened caution and adhere strictly to legal requirements. It is essential to distinguish between processing data for personal and professional purposes, ensuring data security, and safeguarding the client's interests.

Since legal practice does not grant unlimited mandate, unlawful processing of personal data by a lawyer can trigger a chain reaction. Specifically, a single action may not only violate personal data processing regulations but also breach professional standards.

This article focuses on the reconciliation and analysis of established practice, examining individual cases of violations of lawfulness or personal data processing standards within the context of legal practice.

Keywords: Lawyer, personal data, data processing, professional standard.

1. Introduction

In the course of their professional activities, lawyers often handle personal data, including that of both their clients and opposing parties. In this regard, lawyers (as well as their clients) are protected by Article 2, Paragraph 2, Subparagraph “d” of the Law of Georgia “On Personal Data Protection,” which

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exempts individuals from liability when processing personal data for the purposes of legal proceedings. However, this exemption should not be understood as granting lawyers absolute freedom in processing personal data. On the contrary, their actions, even when taken in the client's interest, may still violate the aforementioned law.

An interesting practice has developed in Georgia regarding the protection of personal data. In this context, there have been numerous cases in which the Personal Data Protection Service (hereinafter referred to as the Service) has reviewed individual applications and identified violations of the law. This work will primarily rely on the practice of the Service, which has encountered several noteworthy precedents. Two aspects should be noted in advance: a) for the purposes of this article, public information was requested from the Service. Accordingly, cases involving the appeal of the Service's decisions are not discussed herein¹. Additionally, despite legislative changes,² the fundamental principles reflected in decisions made under the now-invalid law³ remain relevant and are incorporated within the framework of the new law.⁴

2. The Scope of a Lawyer's Activities and Its Relation to Personal Data Protection

According to Article 1, Paragraph 2 of the Law of Georgia "On Lawyers," a lawyer must comply with the law and the norms of professional ethics. Additionally, Article 36 of the same law states: "If a lawyer commits an offense, he/she shall be held liable in accordance with the general procedure established by the legislation of Georgia." This provision does not limit a lawyer's liability solely to the Code of Professional Ethics. Rather, it also encompasses, for example, violations related to the disregard of personal data protection norms or other legal infractions.⁵ The following example illustrates this point: when acting in the client's interest and fulfilling obligations under a

¹ Therefore, it is possible that a different approach may also be present in judicial practice.

² This refers to the Law of Georgia on Personal Data Protection, which was adopted on June 14, 2023, and published on July 3, 2023 (Document Number: 3144-XI86-X83, Registration Code: 010100000.05.001.020936), and is fully enacted at the time of the publication of this article.

³ This refers to the Law of Georgia on Personal Data Protection, which was adopted on December 28, 2011, published on January 16, 2012, and whose date of repeal is March 1, 2024 (Document Number: 5669-66, Registration Code: 010100000.05.001.016606).

⁴ The new law is even more aligned with European standards, and it shares the substantive issues/principles that were in effect under the old law.

⁵ Accordingly, a negative legal consequence may arise for the lawyer in proportion to each violation.

contract of assignment⁶—such as providing documentation or informing the client about a legal matter—a lawyer does not engage in misconduct. However, the manner in which the lawyer obtains and shares such information is crucial. A common example involves requests for public information. While the right to access public information is constitutionally guaranteed, it is essential to ensure that the content of such requests does not lead to the unlawful disclosure of personal data. In practice, there is a precedent where a lawyer submitted a request to a relevant body, seeking specific information. The request was accompanied by documentation that had been submitted by the opposing party in a court dispute, which contained personal data of individuals. As a result of the service's disclosure of this documentation, a violation was found.⁷

Of course, the above example does not mean that a lawyer is prohibited from requesting public information. On the contrary, a lawyer has the right to submit a request with the content they deem necessary, even if the requested information concerns an individual's personal data. Such an action does not, in itself, constitute a violation of the law.⁸ In this regard, an interesting case arose in practice when a lawyer requested public information concerning a minor.⁹ The public institution provided the lawyer with this information without obtaining the necessary consent from the relevant data subject.¹⁰ As a result, the public institution failed to comply with the legislation and was found to be an offender by the Service.¹¹

3. Separating Household Exemption from Professional Duties

What may be considered a client's personal goal may not necessarily align with a lawyer's personal goals. For example, if a lawyer violates confidentiality

⁶ See the decision of the Personal Data Protection Service of Georgia, dated March 5, 2024, No. 8-1/046/2024.

⁷ Decision of the Personal Data Protection Service of Georgia, dated June 30, 2024, No. 8-1/149/2023.

⁸ A lawyer's desire may be to present such information as additional evidence in court. See the decision of the Personal Data Protection Service of Georgia, dated October 6, 2022, No. 8-1/130/2022 – whether the court will accept evidence obtained in this manner is a separate matter for dispute and consideration, and falls outside the competence of the Service.

⁹ Special rules are provided by legislation regarding minors, and the issue is presented differently. For more on this issue, see *Khubulia N.*, Challenges in the Processing of Children's Personal Data, *Journal of Personal Data Protection Law* No. 1, 2024, 62-71.

¹⁰ Neither from the legal representative nor, logically, from the minor.

¹¹ Decision of the Personal Data Protection Service of Georgia, dated February 20, 2023, No. 8-1/024/2023.

by disclosing details of a specific case that could identify individuals,¹² the consequences for the lawyer may differ from those for the client, even if the same action is taken.¹³ Of course, it is essential to investigate whether any of the preconditions¹⁴ or legitimate interests¹⁵ outlined in Article 2, Paragraph 2 of the Law of Georgia on Personal Data Protection are genuinely applicable.

4. Scope of Actions Based on the Client's Interests

Protecting the client's interests is a lawyer's primary duty, which must be carried out in accordance with the law.¹⁶ According to Article 6, Paragraph 1 of the Law of Georgia "On Lawyers," *"A lawyer has the right to use all means to protect the interests of a client that are not prohibited by legislation or professional ethics."* Therefore, the client must be protected in a manner that does not violate the law. This means that if a lawyer commits any misconduct, they will be held liable in accordance with the relevant legal provisions.¹⁷

a. The inadmissibility of violating the law, even if the circumstances of the dispute necessitate such action

Depending on the circumstances of the case, presenting additional evidence to the court may be necessary. This may require applying to a specific body, seeking clarification on an issue, or taking other relevant actions. However, acting solely in the client's interest does not justify a lawyer's actions if they violate the law.¹⁸ For example, a case from recent practice involved a

¹² For consideration, see the decision of the Personal Data Protection Service of Georgia, dated August 5, 2022, No. 8-1/081/2022.

¹³ Considering the combination of specific circumstances. See the decision of the State Inspector's Service of Georgia, dated April 21, 2020, No. 8-1/137/2020.

¹⁴ See the decision of the State Inspector's Service of Georgia, dated June 15, 2021, No. 8-1/207/2021.

¹⁵ See, for example, the decision of the State Inspector's Service of Georgia, dated April 28, 2020, No. 8-1/147/2020.

¹⁶ See Article 5 of the Code of Professional Ethics for Lawyers.

¹⁷ This could also be a crime outlined for by the Criminal Code.

¹⁸ Since the combination of principles and grounds for data processing should be clearly defined. See, for example, the decision of the Personal Data Protection Service of Georgia, dated August 7, 2024, No. 8-1/191/2024.

lawyer who sent a letter to a governmental body, disclosing the marital status of a particular person. The Service determined that this action constituted a violation of the law.¹⁹ Furthermore, during the proceedings, the Service requested the lawyer to disclose the source of the data included in the letter. Specifically, it inquired whether details such as marital status or family relationships were obtained from case materials, behavioral analysis, the client's statements, or other circumstances that justified such a conclusion. Additionally, the Service asked the lawyer to specify the means by which this information became available to him. Notably, the lawyer did not provide the requested information, which ultimately became a key factor in the Service's decision.²⁰

b. Video and Audio Surveillance by a Lawyer

An interesting case arose in practice within the framework of legal proceedings: a lawyer's client had a telephone call with the opposing party in the lawyer's office. The conversation was conducted in "loudspeaker mode,"²¹ meaning those around could hear it. Video and audio surveillance were conducted in the room where the conversation took place. Although the relevant information was recorded, the participant in the conversation was unaware of the recording, and the opposing party was not informed. Later, the opposing party discovered in the lawsuit filed in court that a reference was made to a conversation, the recording of which had not been consented to. As a result, the Service determined a violation of the law, including unlawful joint processing of personal data.²²

¹⁹ Decision of the Personal Data Protection Service of Georgia, dated July 7, 2023, No. 8-1/153/2023.

²⁰ According to Paragraph 3 of Article 51 of the Law of Georgia on Personal Data Protection, the Service has the authority to request information. Therefore, this does not contradict the second sentence of Paragraph 1 of Article 38 of the Law of Georgia on Lawyers: A lawyer shall independently carry out the practice of law. Any unlawful interference with a lawyer's activities, hindrance to a lawyer's work, improper influence on a lawyer by a state authority and/or another individual, intimidation, harassment, coercion, persecution, pressure, infliction of moral and/or material damage, violence or threats of violence, as well as any other act that may undermine the independence of the lawyer is prohibited.' This reasoning is provided in the decision.

²¹ "Loudspeaker".

²² Decision of the Personal Data Protection Service of Georgia, dated August 14, 2024, No. 8-1/198/2024.

c. Legality of Data Storage

Recording, storing, and disclosing a meeting (assembly) by a lawyer without obtaining the data subject's consent constitutes a violation of the law. In practice, there has been a case where a shareholders' meeting was recorded without the explicit consent of the attendees, and the recording was later disclosed.²³ While no legal violation was established for these two actions due to the statute of limitations, the law firm was held liable for storing the recording, as it was made without consent and retained unlawfully. From the service's standpoint, assessing the legality of evidence for procedural purposes falls outside its competence. However, if the law firm intended to present this recording as evidence in court, it should have been processed solely for legal proceedings. Furthermore, the recording should have been deleted immediately after serving its legal purpose, which did not occur in this case.

5. Connection with Professional Ethics Standards

In addition to violating personal data protection laws, a lawyer's actions may also breach the obligations outlined in the Code of Professional Ethics. For instance, publicly disclosing information about a colleague²⁴ or an opposing party,²⁵ as well as making insulting remarks, can constitute ethical violations.²⁶ In such cases, the lawyer's conduct will be evaluated separately within the framework of professional standards. Additionally, if the lawyer's actions involve identifying individuals and thereby violating the Law of Georgia on Personal Data Protection, the Service will independently assess the matter.²⁷

²³ Decision of the Personal Data Protection Service of Georgia, dated October 6, 2022, No. 8-1/130/2022.

²⁴ Regarding unlawful actions publicly made against a colleague, see, for example, the decision of the Ethics Commission of the Georgian Bar Association, No. 078/23, dated July 31, 2024.

²⁵ Regarding unlawful actions toward the opposing party, see for example, the decision of the Ethics Commission of the Georgian Bar Association, No. 056/22, dated February 8, 2024; also, the decision of the Disciplinary Chamber of the Supreme Court of Georgia, No. 336-02-24, dated April 11, 2024.

²⁶ See, for example, the decision of the Ethics Commission of the Georgian Bar Association, No. 097/18, dated February 23, 2024; also, the decision of the Disciplinary Chamber of the Supreme Court of Georgia, No. 336-01-22, dated April 14, 2022.

²⁷ An illustrative case is when a lawyer filed a complaint with the Ethics Commission against a fellow lawyer for violating ethical standards and focused on such information (data) in the complaint, which resulted in a violation being established against him. See the decision of the Personal Data Protection Service, No. 8-1/153/2023, dated July 7, 2023.

The Ethics Commission of the Georgian Bar Association independently examines cases involving violations of the Code of Professional Ethics by lawyers. In this context, the Service reviewed the following case related to the activities of the Ethics Commission: The Chairperson of the Ethics Commission informed one of the collegiums in writing that a similar case was pending in another collegium and advised them to take this into account. A lawyer filed a complaint with the Service, arguing that the disclosure of such information constituted a legal violation. However, the Service determined that no legal breach had occurred, as the Chairperson of the Ethics Commission was authorized by law to take such action, which fell within their competence.²⁸

6. Data Depersonalization by a Lawyer

Depersonalization of data is a crucial safeguard for protecting the data subject.²⁹ It involves processing data in such a way that the data subject cannot be identified, or identification would require disproportionate effort, cost, and/or time. This legislative provision (as outlined in Article 3, Subparagraph “c” of the Law of Georgia on Personal Data Protection) highlights the key principle: the data must not be recognizable by a third party. A common example of depersonalization is the use of initials; however, this alone does not necessarily ensure legal protection.³⁰ Two illustrative examples can be considered for discussion:

The first example involves information shared on social media by a law firm regarding a case that was resolved in favor of its client. The firm published details about the case, including the attorney’s initials.³¹ According to the service, this combination of information made it possible to identify the applicant. The service rejected the law firm’s argument that identification was only feasible for a limited group of individuals (such as witnesses and family members of the parties involved). Instead, it concluded that the published details allowed the data subject to be identified without undue effort.³²

²⁸ Decision No. 8-1/042/2024 of the Personal Data Protection Service of February 29, 2024.

²⁹ Archuadze T., Depersonalization of Personal Data as a Guarantee of Data Subject Protection, Constitutional Law Review, No. 11 (2017), 101.

³⁰ For a detailed information on this issue, see there, 115.

³¹ Specifically, information about the religious beliefs of the parties involved in the process, information about the residence of family members, etc.

³² Decision No. 8-1/081/2022 of the Personal Data Protection Service of Georgia, dated August 5, 2022.

The second example involves a lawyer who filed a complaint with the Bar Ethics Commission against a colleague, also mentioning the colleague's spouse. While the lawyer's full name was provided, only the spouse's initials were used. Nevertheless, the service deemed this a violation. The reasoning was that, despite the use of initials, the complaint included additional details such as the spouse's profession, position at a company, work experience, completed exams, language proficiency, involvement in a dispute with the company, the subject of the dispute, and the office address. As a result, the combination of these details made it possible to identify the individual, undermining the effectiveness of depersonalization. Furthermore, the identification of the spouse had no legal relevance to the purpose of the complaint.³³

7. Protection of Personal Data Security by a Lawyer

Lawyers (law firms) often store case files in their offices, where they may be accessible to various individuals, including colleagues and other employees. Frequently, the information handled by lawyers includes special categories of personal data, which require enhanced protection.³⁴ In this regard, service practice includes cases where lawyers and law firms have been instructed to implement organizational and technical measures to ensure data security.³⁵ Examples of such measures include storing physical files in a securely locked location, establishing a robust protection system for electronically stored data, and restricting public access.

8. Connection with Other Legal Institutions

Illegal processing of personal data may also infringe upon other rights of an individual.³⁶ A common example is the violation of non-property rights,

³³ Decision No. 8-1/153/2023 of the Personal Data Protection Service of Georgia, dated July 7, 2023.

³⁴ Moreover, its disclosure is not permitted. See, for example, the Decision No. 8-1/121/2021 of the State Inspector's Service of Georgia, dated April 26, 2021.

³⁵ Personal Data Protection Service's 2022 Activity Report, 109.

³⁶ In this case, it is necessary to distinguish between the violation of the right and the imposition of responsibility on the person. Therefore, for example, the professional standard of the lawyer will not be emphasized in this case.

which can manifest as defamation, insults, or similar offenses.³⁷ Even when a violation of non-property rights occurs alongside the unlawful processing of personal data, the service lacks the authority to examine such matters—particularly in determining the truthfulness or accuracy of the disseminated information.³⁸ In such cases, the affected party must pursue the issue individually, for instance, under the Law of Georgia “On Freedom of Speech and Expression.”³⁹

9. Conclusion

A lawyer (or law firm) must pay close attention to the issue of personal data processing. Legal activities are governed by the Law of Georgia "On Personal Data Protection," whether it involves self-advertising, disseminating information, or obtaining documentation. Additionally, a lawyer's actions may violate not only this law⁴⁰ but also the standards set forth in the Code of Professional Ethics,⁴¹ among others. Georgian practice in this area has developed interestingly, with several decisions from the service outlining when a lawyer's actions were deemed to have violated the law.⁴²

Therefore, a lawyer must carefully assess the scope of their authority to process personal data. A purely formal approach (such as depersonalization—where the data subject can still be identified—or relying on the client's interest) cannot serve as a valid defense against liability.

³⁷ See the decision of the Supreme Court of Georgia, dated October 22, 2020, No. 86-921(3-19).

³⁸ Personal Data Protection Service's Decision No. G-1/042/2024 of February 29, 2024.

³⁹ In relation to lawyers, considering their profession, the standard for freedom of expression cannot be the same as the standard set for representatives of other professions. See on this topic, *Morice v. France* [GC], [2015] ECHR, No. 29369/10, the Georgian Supreme Court's Ruling No. 16-1366-2019 of April 6, 2020, and the Georgian Supreme Court's Ruling No. 16-622-2022 of July 5, 2023.

⁴⁰ Accordingly, for the violation of the "Personal Data Protection Law" of Georgia, compensation for damages may be imposed, and this may be based on Articles 207 and 208 of the General Administrative Code of Georgia, as well as Articles 18 and 413 of the Civil Code of Georgia. For illustration, see the decision of the Supreme Court of Georgia dated July 11, 2023, №86-194(3-23).

⁴¹ See, for example, the decision of the Disciplinary Chamber of the Supreme Court of Georgia, dated November 5, 2024, №166-09-24. Regarding lawyer advertising, see also *Khubuluri T.*, *The Development of Legal Activity Advertising in the USA (19th-20th centuries)*, Ivane Surguladze 120, Anniversary Collection, Gegenava (Ed.), Tbilisi, 2024, 123-140

⁴² See, for example, the decision of the State Inspector's Service, dated April 26, 2021, №8-1/121/2021.

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