

From the Editor-in-Chief

The following issue of the Journal of Personal Data Protection law is dedicated to the ten-year anniversary of the establishment of the Georgian Personal Data Protection Supervisory Authority.

The Personal Data Protection Service welcomes this remarkable date with a number of innovations.

On June 20, 2023, by the decision of the the “European Data Protection Board” (EDPB), the Personal Data Protection Service obtained the Status of Observer to the Board’s activities. The “European Data Protection Board”, as an EU body, is established on the basis of the “General Data Protection Regulation” (GDPR) and consists of representatives of the Data Protection Supervisory Authorities of each EU member state, the European Commission and the “European Data Protection Supervisor” (EDPS). It plays an essential role in ensuring the effective enforcement of personal data protection regulations across the EU, establishing consistent, uniform, and best practices for data protection supervisory authorities.

The Board based its decision to grant observer status to the Personal Data Protection Service of Georgia on several criteria: Activity and degree of independence of the Service, legal regulations and the commitment declared by the state — the international obligation taken for the purpose of joining the European Union to fully comply national data protection legislation in accordance with the rules applicable in the European Union. Also, it should be noted that the Board consulted with the European Commission and various institutions of the European Union to achieve homogeneity.

This decision is of utmost importance, signifying that the Personal Data Protection Service of Georgia is now a respected member of the European community of the data protection authorities, which, on one hand, marks a significant achievement for us, while on the other hand, it entails an enormous responsibility, of which every employee of the service is keenly aware.

On June 14, 2023, a new Law of Georgia "On Personal Data Protection" was adopted to strengthen the Personal Data Protection Service of Georgia on the way to European integration and to ensure a high standard of the right to data protection in the country, which marks a crucial step forward in the development of personal data protection law in Georgia. The adoption of the law was driven by the necessity to align existing legislation on personal data protection with European standards, to fulfill Georgia’s international obligations, and the need to establish internationally recognized principles and best practices.

It is crucial to harmonize personal data protection legislation with EU regulations and subsequently integrate new standards at the national level.

The new Law of Georgia "On Personal Data Protection" proposes such important changes as refining existing terminology or establishing completely new concepts in the field of personal data protection.

The law redefines the term "data subject consent", "audio monitoring", broadens the definition of "direct marketing", introduces such an important new term as "profiling". In addition, one of the important issues is "pseudonymization" of data.

In addition to terminological innovations, the new law defines the "transparency" of data processing at the level of principle. The mentioned principle holds great importance for the data subject in terms of the protection and realization of their rights. It must be clear and transparent to the natural person that their data is being processed or planned to be processed. The principle of transparency requires that data subjects have access to information regarding the processing of their personal data.

The new law expands the data subject's rights and establishes guarantees for the protection of mentioned rights. One of the new rights that the new law gives to data subjects is right to transfer data, the so-called right to data "portability". The right to data portability will make it easier for data subjects to use certain services. In turn, it is important for companies to ensure the implementation of appropriate technical facilities to enable the transfer of personal data from one information technology environment to another and, most importantly, to implement appropriate security measures during the process.

The impact assessment mechanism on data protection provided by the new law is of great importance, which is a novelty for the Georgian legislation on personal data protection and considering the rapid development of new technologies, it aims to reduce the increased threats of human rights violations.

The new law "On Personal Data Protection" reframes issues related to direct marketing. It is noteworthy that according to the new law, regardless of the basis of data collection or extraction and their availability, data processing for direct marketing purposes will be possible only with the consent of the data subject, unlike the current norm. In addition to the name, surname, address, telephone number, and email address of the data subject, processing other data for direct marketing purposes will require the written consent of the data subject. It should also be noted that before obtaining the consent of the data subject and during the implementation of direct marketing, data controller/data processor must explain to the data subject in a clear, simple and understandable language their right to withdraw consent at any time, along with the mechanism and rules for using this right.

Among the n provided by the new law, an important requirement is the appointment of a personal data protection officer in public and some private institutions.

According to the law, the data protection officer ensures:

- Informing the data controller, data processor and their employees on issues related to data protection, providing them with consultation and methodical assistance;
- Participation in the development of the internal regulations related to data processing and the impact assessment document on data protection, as well as monitoring the implementation of Georgian legislation and internal organizational documents by the data controller or data processor;
- Analyzing the received statements and complaints regarding data processing and making relevant recommendations;
- Receiving consultations from the Personal Data Protection Service of Georgia, representing data controller and data processor in relations with the Service;
- In the case of the data subject's request, to provide them with information about data processing stages and their rights;
- Additionally, the data controller or data processor undertake other functions with the aim of enhancing the standards of data processing.

The obligation to appoint or designate the officer applies to public institutions, insurance organizations, commercial banks, microfinance organizations, credit bureaus, electronic communication companies, airlines, airports, medical institutions, as well as individuals acting as data controllers and data processors, who process the data of a large number of data subjects or engage in systematic and large-scale monitoring of their behavior. Furthermore, the normative act of the President of the Personal Data Protection Service of Georgia determines the circle of persons who are not obligated to appoint or designate a personal data protection officer.

Although the law imposes the obligation to appoint an officer only in the case of the individuals listed above, other data controllers, however, at their own discretion, have the right to appoint or designate a personal data protection officer. According to the law, the personal data protection officer must possess proper knowledge in the field of data protection. In addition, data controller and data processor are required to provide the officer with appropriate resources and independence in the process of carrying out activities. Furthermore, they have an obligation to proactively publish the officer's identity and contact information on the website (if applicable) or through other available means.

The establishment of the data protection officer institute is of particular importance as it brings the Georgian personal data protection legislation closer to European standards and significantly strengthens the guarantees of protecting the rights of data subjects. It can be asserted with certainty that the actual implementation of the data protection officer institution will have a substantial preventive effect and qualitatively contribute to strengthening the legality of the data processing process.

One of the issues that is changing significantly involves administrative fines. The new law imposes a warning or a fine for the violation of any obligation or rule defined by the law "On Personal Data Protection". For example, a data controller may be held liable for breaching data processing principles or grounds, or for bypassing direct marketing requests, unlawfully conducting audio or video monitoring, not having a data protection officer when required by the law, etc.

The new law also broadens the scope of administrative responsibility for offenses and enhances the measures of responsibility.

Similar to the current law, the new legislation still specifies fixed fine amounts, although these amounts have been significantly increased. Specifically, the fine amount was tied to the offender's organizational structure and annual turnover. For instance, a violation of any of the principles of data processing stipulated by the law will result in a warning or a fine of 1,000 GEL for an individual, public institution, non-entrepreneurial (non-commercial) legal entity, as well as a legal entity, a branch of a foreign enterprise and an individual entrepreneur whose annual turnover does not exceed 500,000 GEL. Engaging in the same action by a legal entity (except for a non-entrepreneurial (non-commercial) legal entity), a branch of a foreign enterprise, and an individual entrepreneur whose annual turnover exceeds 500,000 GEL will result in a warning or a fine of 2,000 GEL.

A novelty in the law includes the definition of mitigating and aggravating circumstances. Furthermore, failing to comply with the legal requirements of the Personal Data Protection Service of Georgia is deemed an administrative offense, for which the amount of the stipulated fine is 1000-2000 GEL. The mentioned change will contribute to the effective implementation of the decisions made by the Service and will have a significant impact on the improvement of the overall situation of personal data protection in the country.

It is important to note that the statute of limitations for administrative offenses under the new law has been increased to 4 months instead of the existing 3 months, which can also be considered as an important preventive and a facilitative measure for effective supervision.

Under the new law, if, during data processing considering new technologies, data categories, volume, purposes, and means of data processing, there is a high probability of a threat to the violation of basic human rights and freedoms, the data controller is obliged to conduct an impact assessment on data protection in advance.

In cases where, following the impact assessment, a high threats of violating basic human rights and freedoms is identified, the data controller is obligated to take all necessary measures to substantially reduce these threats. Additionally, if necessary, the data controller is entitled to contact the Personal Data Protection Service for consultation. It should be noted that if it is impossible to substantially reduce the threat of violating basic human rights and

freedoms with additional organizational and technical measures, data processing should not be conducted.

According to the new law, there is an obligation to report a data breach to a supervisory authority when the incident poses a significant threat to basic human rights and freedoms. Additionally, should be noted that, according to the new law, the criteria for determining an incident that poses a significant threat to basic human rights and freedoms, as well as the procedure for reporting this incident to the Personal Data Protection Service of Georgia, should be specified by the normative act of the President of the Service. Furthermore, the new law mandates informing the data subject about the incident.

The main provisions of the new law of Georgia “On Personal Data Protection” will take effect from March 1, 2024, while the institution of the data protection officer, the obligation to assess the impact on data protection and the regulations governing administrative offenses related to them will come into force from June 1, 2024.

The implementation of the new law will significantly enhance the personal data processing stages. On the one hand, it will reduce the cases of law violations, thereby strengthening the preventive effect, on the other hand, it will empower the Personal Data Protection Service of Georgia for more effective supervision and response.

We serve the implementation of the European idea, values and principles of personal data protection in Georgia!

Prof. Dr. Dr. Lela Janashvili

President of the Personal Data Protection Service of Georgia
Professor at Ivane Javakhishvili Tbilisi State University
Visiting Professor at the Autonomous University of Barcelona