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## **PUBLIC ADMINISTRATION OF PERSONAL DATA PROTECTION IN MODERN UKRAINE**

**Taras Gurzhii – Anna Gurzhii – Vadym Seliukov\***

### **ABSTRACT**

Institutionalizing of the personal data protection as an integral part of informational law and one of the main directions of national information policy, actualizes the issue of improvement its organizational and legislative framework. Above all, the state of information security depends on its organizational and legal support. Developed legislative and administrative basis optimizes the scope of information relations, making it tolerant to internal and external threats. In turn, serious legislative and organizational flaws entail wide range of destructive consequences. It undermine informational security, provoke conflicts, create preconditions for manipulation, abuse and harassment. From year to year, in Ukraine increases the number of illegal databases, the cases of unauthorized access to personal data systems, failures of protection personal data and the rights of its owners. Obviously, these trends will take place until systemic deficiencies in legal regulation and organizational support of personal data protection are eliminated. This stipulates the need for a comprehensive improvement of legislative and organizational support of personal data protection, based on the achievements of modern science, progressive law making and law-enforcement tendencies, best administrative practices in the field of informational security and personal data protection.

**Key words:** information, personal data protection, public administration, informational security, privacy

### **Introduction**

One of the main political priorities of modern Ukraine is building of the open,

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people-centred informational society, where everyone can create, collect, use and distribute information, realizing his potential, promoting social and personal development, improving quality of human life. Ukraine has its own history of foundation of the grounds of information society. Among the most important achievements of recent decades can be outlined: the activity of the world famous school of cybernetics; adoption of the National Information Technology Program; expansion of innovative informational and communication technologies; improvement of multipurpose national electronic information-analytical systems; development of national electronic government system.

At the current stage of development, the legal basis for building the informational society in Ukraine is being conceptually formed. During 1991-2018 there was a wide spectrum of legislative acts adopted, aimed to promote civil society and open administration, create electronic information resources, protect intellectual property, provide wide access to public information, electronic document management, information security and more.

Business entities intensively introduce modern information technologies and solutions in order to create high-powered resources and means of electronic communication. Great efforts are directed to introduction of new informational and communication technologies in the public sector, particularly in education, science, health and culture (Akrivopoulou, 2013).

However, darting development of information networks, expansion of technical possibilities in the field of storage, processing and transmission of information, wide branching of electronic communications networks, increasing the speed, capacity and functionality of electronic data bases – are not only factors of social progress, but also a source of different threats to information security and private confidentiality. Powerful information resources, which offer opportunities for the gathering, processing and use of confidential information can simultaneously serve as a lever of psychological pressure on people, means of interference into personal life, a tool of discrediting a person in the eyes of society.

For modern Ukraine, this problem is more than relevant. Today in Ukraine there are hundreds of thousands databases registered, containing personal data (as for 01.01.2017 more than 80.000 personal data bases are officially registered). Moreover, not always the functioning of such data bases is carried out strictly following the law and highest protection of confidential information. In many cases, the processing of personal data is accompanied by numerous disorders that cause leaks of confidential information, unauthorised access to it, its use in illegal way and improper purpose.

Nowadays, the practice of unauthorized use of confidential information during election campaigns, marketing activities and social surveys is widely spread. This information is often used to blackmail and, as well, to even personal or political scores. Negative consequences of illegal disclosure of personal data inflict harm to the national, political and economic interests as well as serve a source of personal problems, business and private conflicts (Florida, 2014). There is an increased awareness of the importance of data protection, as it regards not only the protection of the private lives of individuals, but their very freedom. This approach is reflected by many national and international documents (Rodotà, 2009).

This situation requires the development of legal, organisational, technical and other measures aimed at tightening control over the circulation of information, data protection support, and protection of private confidentiality.

In the light of the above, the main aim of the article is to formulate scientific grounds and practical recommendations for a comprehensive improvement of legislative and organizational support for personal data protection in modern Ukraine. This aim implies the need for complex research, based on analysis of international and domestic informational legislation, law making and law enforcement practice, modern trends of public administering.

The study is based on a wide spectrum of knowledge acquisitions. In particular, the dialectical method provided a comprehensive consideration of the issues of personal data protection in the unity of its social, legal, organizational and technical content. With the deductive method the current state and main trends of personal data protection in modern Ukraine is overviewed. The use of the inductive method allowed highlighting the systemic drawbacks of the national system for personal data protection on the example of certain legislative shortcomings, problems of public administration, specific legal cases. The method of analysis is used to systematize scientific legal researches on the issues of personal data protection, as well as to study the novelties of international, domestic and foreign information legislation. Through the prism of the systematic approach, the organizational and legal mechanism for protecting personal data was considered as the integral unity of the constituent elements, which are in close interconnection and complex interaction. Based on functional method, a number of suggestions on delimitation of competence and improvement of organizational structure of personal data protection authorities have been formulated.

In this context, the hypothesis is based on the assertion that successful solution of various problems of personal data protection in modern Ukraine is possible only within the framework of integrated policy, providing the complex reform of informational legislation and specified public administration.

Among the Ukrainian scientists, who explored the personal data protection as a law phenomenon and legislative institute, should be outlined the works of **Baranov** (2000), **Bazanov** (2000), **Bryzhko** (2000), **Shvets** (2003), **Kaliuzhniy** (2003), **Chernobay**, 2005). Ideas and conclusions of this study were significantly influenced by ideas of foreign scientists **Brezniceanu** (2017), **Floridi** (2014), **Houle** (2010), **Sossin** (2010), **Rodota** 2009.

The theoretical basis for this article is a **theory of “CIA triad”**, according to which information security's primary focus is the balanced protection of the confidentiality, integrity and availability of data (also known as the CIA triad) while maintaining a focus on efficient policy implementation **Perrin** (2012), **Andress** (2014).

## **1 Public administration on personal data protection: current status and modern trends**

To this end, it is necessary to review the Ukrainian system of public administration in the field of personal data protection. At the national level, personal data protection is a complex, multidimensional process, determined by a wide range of social actors: state authorities, public institutions, private structures, legal entities and individuals. All of them (both those who form informational policy, those who implement it, those who handle personal data and those who provide its security) exert significant influence on functioning and development of personal data protection.

However, in current context, the main burden of responsibility for the formation and implementation of national policy is carried out by public administration. Public administration, as the leading organising force of democratic society, defines the strategy and priority directions of socio-economic development. It makes organising influence on the main social relations, forms the content of specific social ties, “clothes” them in legal form, provides them support and protection, guarantees their stability and security. It forms organisational mechanism of such influence and itself act as its core element. (Mosianin, 2005). National data protection authorities (DPAs), central actors in the data protection landscape, face a difficult task when fulfilling their

missions and acting as guardians of these rights under the provisions of the outdated Directive 95/46/EC (Giurgiu, Larsen, 2016).

Analysis of Ukrainian current legislation gives grounds to conclude that public administration in the field of personal data protection is represented by extensive system of governance (bodies and officials) which along with solving general management issues also provide specific administrative functions in personal data sphere. Today this system is comprised of: The Parliament (Verkhovna Rada of Ukraine), The President of Ukraine, The Cabinet of Ministers of Ukraine, The Ukrainian Parliament Commissioner for Human Rights (Ombudsman), central executive authorities, local state administrations, local self-government (majors and councils).

*The Verkhovna Rada of Ukraine* plays an important role in forming the principles of public administration in the field of personal data protection. As the only legislative body, Ukrainian Parliament at the highest regulatory framework establishes basic requirements for personal data protection, outlines its principles, and determines special powers of government, corresponding rights and obligations of individuals and legal entities.

Within its constitutional powers, Verkhovna Rada of Ukraine ratifies international agreements on personal data protection, which automatically makes them a part of national legislation. The Convention for the protection of individuals with regard to automatic processing of personal data and the Additional Protocol to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data Regarding Supervisory Authorities and Trans-border Data Flows, ratified by the Verkhovna Rada of Ukraine July 6, 2010, may serve as a good example.

The Ukrainian Parliament influences the administration of personal data protection by regulating the legal status of power entities and officials. In particular, by the acts of Parliament (the laws of Ukraine) the organisational principles and activities of the Ombudsman, the central and local executive bodies, as well as local self-government are defined. Additionally, the Parliament ratifies International acts on Personal data protection, making them a part of national legislation.

Equally important prerogative of Verkhovna Rada's on personal data protection is solving personnel issues. In particular, it appoints the key subject of public control in the field of personal data protection – The Ukrainian Parliament Commissioner for Human Rights (Ombudsman).

Along with the adoption of legislative acts, solving organisational issues, nominations and appointments, Verkhovna Rada of Ukraine regulates personal data protection sphere by various forms of parliamentary control. Thus, based on Art. 85 of the Constitution of Ukraine, in cases stipulated by law the Parliament of Ukraine oversees the Government activity, namely: approves the Program of The Cabinet of Ministers of Ukraine; annually hears and considers the report of The Cabinet of Ministers of Ukraine on the progress and results of the Program, as well as reports on the progress and results of national programs (including programs of information security and personal data protection), considers the responsibility of Government etc.

*President of Ukraine* as the Head of State and guarantor of state sovereignty, territorial integrity, adherence to the Constitution of Ukraine, rights and freedoms of the people and citizens, is managing all areas of public and political activities, including activities on information security and personal data protection. The President represents the state as a whole. Being the Head of State, he has rich array of powers, allowing him to exert influence on all branches and spheres of public administration including personal data protection.

However, in practice, despite the special legal status and wide spectrum of powers, his real influence on public administration in the field personal data protection is very limited. This is partially due to a focus on public safety and security issues, resulting from the military aggression in eastern Ukraine. On the other hand, after the Constitutional reform of 2014 much of the powers (including on the establishment of central executive bodies and appointing their management) have moved from the President to the Parliament and the Cabinet of Ministers of Ukraine, which automatically caused a narrowing the space of his political activity.

Nevertheless, quite powerful administrative instruments remain at the President's disposal: the right to suspend the acts of the Government; the appointment of heads in local state administrations; the heading of the National Security and Defence Council of Ukraine as a subject of state control over the activities of executive bodies in national security, and others. This leads to the conclusion that both today and in the near future, President of Ukraine will take an important place in the system of informational policy and personal data protection.

*The Cabinet of Ministers of Ukraine* as the highest entity of executive power occupies prominent place in the national system of public administration. The

Cabinet of Ministers of Ukraine administers personal data protection, both directly and through separate ministries, central executive authorities and local state administrations, directing, coordinating and supervising their activities.

Analysis of the legal status of The Cabinet of Ministers of Ukraine, as well as its legislative and administrative practice, indicates that the main forms of its participation in the administering of personal data protection are: development of legislation on personal data protection; adopting and support of national programs on information protection; financing these programs, monitoring their implementation; directing and coordinating the work of ministries and other authorities in the field of personal data protection; creation, reorganisation and liquidation of the central executive entities (ministries, agencies, services) responsible for realisation of the national information policy; appointments of the officials; control over legality of executive bodies, their officials and local authorities; determining legal principles of proceeding the State Register of Personal Data-bases; planning and organisation the steps on protection the informational rights and freedoms, including - the right to confidentiality of private life; enforcement of execution judgments in cases of personal data protection by bodies of power, their heads and officials.

This list is not complete. Ukrainian legislation gives to the Cabinet of Ministers of Ukraine a significant amount of powers and opportunities in the field of personal data protection. However, not all of them are fully implemented in practice. This can be explained by objective factors. For example, the power to create central executive bodies, to determine their legal status, formation and head staff Cabinet of Ministers received only with the Constitutional reform of 2014. Therefore, until last few years, their implementation by Government was impossible.

Nevertheless, we must recognise that the vast majority of government inertia is caused by lack of attention to the issues of personal data protection.

Since proclamation of independence of Ukraine in 1991, the Cabinet of Ministers of Ukraine has not adopted any state program on information security and personal data protection (not even the concept of such program was developed). In general, Government failed to establish tight cooperation between different actors of personal data protection policy. Numerous duplications of their administrative powers are not completely eliminated. Changes of laws on personal data protection are reflecting in governmental legal acts with great delay. The level of control over legality of public administering personal data protection is quite low. Social-informational work in this field is carried out inconsistently.

Such state of matters does not meet the needs of today. At a time when information security issues are standing in the way to European integration and impede the implementation of numerous ambitious international projects, their solution should be given much more attention (Blume, 2016-2017). Above all, Government should play a major role in this process by consolidating and directing the efforts of the executive power in the most critical areas of personal data protection.

The primary steps in this direction should be:

- the development and adoption of the state program of personal data protection, which would have interdisciplinary character and based on the principles of relevance, comprehensiveness, targeting, social and economic feasibility;
- comprehensive analysis of the legal status of all entities, responsible for administrating personal data protection, a clear delineation of their competencies, special powers and responsibilities;
- strengthening the control over legality of public administering personal data protection, including – the implementation of relevant court decisions;
- creating the effective mechanism of coordination of executive activities in the field of personal data protection;
- profiling in public sector (as the needs of citizens can span the scope of several authorities and sectors concurrently, the ability to draw data from a large number of sources and create profiles of individuals can improve both the service level and the decision making authorities of government) (Kamby, 2016-2017).

The main activities of the Ukrainian Government on personal data protection should be reflected find the required consolidation of existing information laws, including the Law of Ukraine "On Personal Data Protection". For this purpose, the Act offers supplement special provision (article or series of articles), which would outline the range of public administration sphere of protection of personal data and determined the scope of their powers in this area.

## **2 Ombudsman: broad powers, narrow possibilities**

The history of the Ombudsman's participation in administration of personal data protection is relatively short. Its beginning dates from January 1, 2014 – with the adoption of amendments to the Law of Ukraine "On Personal Data

Protection”, according to which the Ombudsman was recognised as an entity of public control in personal data protection sphere and, simultaneously, endowed with a set of special normative, organisational, administrative and jurisdictional powers. These are in particular: to provide suggestions, complaints and other appeals in the field of personal data protection; to conduct on the basis of complaints or on its own initiative checks of owners and managers of personal data; to approve regulations on personal data protection; to issue mandatory requirements (provisions) for preventing violations the rules of personal data protection (including requirements to change and/or to delete personal data, to give the access thereto, to suspend or terminate of personal data processing); to make recommendations about practical application of legislation on personal data protection; to draw up protocols on administrative offences and guide them to the courts; to inform the entities connected with personal data protection about novets of legislation, changes in their status, their rights and obligations, topical issues of their activity; to monitor new practices, trends and technologies on personal data protection; to organize and to promote international cooperation in the field of personal data protection, etc. (Art. 23 of the Law of Ukraine “On Personal Data Protection”).

This list of powers in the field of personal data protection seems quite wide and complete, even in comparison with best world models of data protection administering (see: Houle, Sossin, 2010). It embodies powerful administrative tools designed to provide multidimensional influence on corresponding public relations. However, the current state of its practical implementation cannot be considered satisfactory. Currently, the vast majority of Ombudsman’s powers on administering personal data protection is declarative. Its practical implementation is inconsistent and sporadic. The main reason for this is an acute shortage of human resources and delays the revision of the structure of the Office of the Ombudsman.

Although the functions on administering personal data protection were assigned to the Ombudsman on January 1, 2014, the first steps to establish institutional mechanisms for their implementation were spread over months. It took a year that a special unit was integrated to the structure of Ombudsman’s Office: the Department on Personal Data Protection (hereinafter - DPDP), which consists from four subdivisions: 1) Department of legal and methodological support; 2) Department of interaction with the holders and managers of personal data; 3) Department of control in the field of public law; 4) Department of control in the field of private law.

Reorganisation delay was followed by very slow recruitment in newly established units. In 2015, only 7 out of 25 staff positions of DPDP were really staffed. In 2014-2015, functioning of every department of DPDP relied on 1-2 people. Such state of matters leaves no illusions about the effectiveness of Ombudsman's activity in the field of personal data protection.

It should be noted that for the proper performance of the Ombudsman's functions in some regions of Ukraine there are the Regional Offices of Ombudsman and Representatives of Ombudsman established, which are representing his interests with all the rights provided his by the law. Nevertheless, obviously, their organisational potential is insufficient to proceed at full capacity of Ombudsman's functions on personal data protection.

Today, there are only two Regional Offices of Ombudsman in Ukraine (in Lviv and Dnipro regions), and the total number of staff is only 3 persons (2 - in Lviv and 1 - in Dnipro). The number of Representatives of Ombudsman is higher, but because of the variety of performed functions (in fact, they cover the entire range of Ombudsman's powers) it is extremely difficult for them to provide a comprehensive and complete control over the legality in the field of personal data protection.

Over time (in 2015-2016) most of vacancies in DPDP were staffed. Nevertheless, despite this, staffing problem did not lose its relevance. As already noted, the staff list DPDP provides only 25 positions, i.e. on average 6 for each department. Obviously, under such indicators the workload for every department and each employee of a department is very excessive. Indeed, by 2014 the vast majority of the functions assigned to DPDP, were handed over to the State Service of Ukraine on Personal Data Protection (SSUPDP) – a central executive body with twice more (51 persons) staff and much better material support.

Only in 2013, the SSUPDP considered about 230 thousand claims from personal data holders, and about 1.5 thousand claims from other individuals and entities; made 187 field audits of legality personal data proceeding; held 192 themed "hot" lines and answered the about 20 thousand questions about practical aspects of personal data protection. Even purely documentary work related to the transfer of powers from the SSUPDP to the Ombudsman required tremendous efforts. At the beginning of 2014, SSUPDP working group transferred 947 947 boxes with 1,414,060 paper claims and applications for registration of personal databases to the Ombudsman's Office. Therefore, it is not surprising that some of these documents are considered today.

In the light of this, 25 employees of DPDP (even at full staffing) are physically unable to manage all activities in the field of personal data protection. Huge complexity, diversity and depth of tasks assigned to DPDP, contribute to raise the question of enlargement Department's staff to the limits corresponding with workload level of subdivisions and employees.

Another factor of negative influence on the Ombudsman's efficiency in the field of personal data protection is imperfect legal support. Analysis of legislative acts, which determine the legal status of the Ombudsman and its Office, shows a number of principal differences.

For example, pass. 10 art. 23 of the Law of Ukraine "On Personal Data Protection" puts the function of drawing up protocols on administrative offenses in the sphere of personal data protection exclusively on the Ombudsman. However, art. 255 of The Code of Ukraine on Administrative offences puts this function on the officials of the Ombudsman's Office; p. 6.7. The Provisions about the Representatives of Ombudsman delegate it to the Ombudsman's Representatives; p. 7.5. The Provisions about Regional Offices of Ombudsman put it on the officials of the Ombudsman's Regional Office.

At the same time, a number of powers giving to Ombudsman's Office by the Law of Ukraine "On Personal Data Protection" (for example, the edition of binding regulations, interaction with other departments/persons responsible for personal data processing etc.) are not reflected in the Provisions about Ombudsman's Office of 20 June 2012 № 4 / 8-12.

It is clear that the existing legislative collisions do not contribute to efficient administering of personal data protection. Their existence entails jurisdictional uncertainty and conflicts. Therefore, there is an urgent need for a comprehensive review and harmonisation of the content of regulations, determining the legal status of the Ombudsman, his Office, his Regional Offices and Representatives.

Central executive authorities in most cases realise their functions on personal data protection in a particular branch or sector of public administration. They do not define the categories of personal data, do not establish general requirements for its protection, do not carry out external inspections, they are not involved in detection and investigation of informational offenses. In fact, any line of action is implemented them only to the extent that is dictated by the internal organisational needs and specific sectoral management.

However, each central executive body, regardless of its activities, is tasked with the comprehensive support of human rights on personal data protection.

For that purpose, specialised units (or determined custodians) on personal data protection were created within the structure of respective ministries, services, agencies and other entities created. Their competencies include: determining the real and potential threats to the security of personal data; analysis of compliance informational legislation, identifying rule violations and informing about them the management to take the necessary measures; cooperation with the Ombudsman and his Office to prevent and to stop violations in the field of personal data protection; ensuring the rights and freedoms of personal data owners. Requirements of such unit or official are mandatory for all staff, who carry out personal data processing.

### **3 Regional aspect of personal data protection**

Local state administrations and local self-government entities administer personal data protection at the level of specific administrative units (regions, districts, cities, villages etc.). In particular, according to current legislation, regional, district, Kyiv and Sevastopol city state administrations are responsible for: implementation of state programs on personal data protection; control over compliance with information legislation; setting the rules of personal data processing in the subordinate bodies, departments, enterprises, institutions and organisations; informing public about the questions of personal data protection; carrying out other functions, delegated them by the Constitution, the laws, the acts of the President, the acts of the Cabinet of Ministers, acts of central executive bodies.

In turn, local self-government entities ensure implementation of legal requirements and decisions of central authorities on information security and personal data protection. They adopt provisions on processing and protection personal data, which is in their possession; provide the control over activities of communal companies in the field of personal data protection; take measures to prevent violations of national information legislation.

Therefore, as it follows from this list of powers, the main vector of local authorities' activity aimed at personal data protection "inside" of their system. They regulate the processing of personal data exclusively within their organisational structure. All their steps to control the legality and observance of personal data protection are purely internal. The external (i.e., not directed at organisational related subjects) rule-making, control, supervisory and jurisdictional activity are not conducted by them.

However, the contribution of local authorities in the implementation of state policy of personal data protection should not be underestimated. Given the enormous number of sub-structures, a huge array of processed information and greater intensity of such processing, their influence on personal data protection sphere is considerably high. Moreover, their administrative functions aimed at implementation of informational policy at regional level cannot be ignored. Among them we may mention participation in public planning (programming) of information security events, participation in law-making activities, public information work (including PSAs) and more.

Thus, local administrations and local authorities is an important part of the administrative mechanism of personal data protection. They determine not only the security of some personal databases, but also the effectiveness of information policy in general.

In this connection, we should not ignore the urgent problems of administering personal data at the local level, such as: - an anachronism of normative regulation (in most cases local authorities react to novels of national legislation with great delays); - unclear division of responsibilities (and in some cases vice versa - duplication) of local state administrations and self-government entities, operating on the same territory; - insufficient attention to the issues of personal data protection, belittling their role (comparatively with economic problems) and low activity on providing solutions. As researchers and practitioners admit, outlined problems require fast solution within the framework of both national and regional informational policy.

#### **4 Integrated policy needed**

Summarising the analysis of organisational aspect of public administration in the field of personal data protection, we have to state rather poor realisation of its rich potential. Despite several indisputable achievements, this mechanism stays unbalanced and its results not always meet the objective needs of society. This situation is caused by a wide range of organisational and legislative problems, appearing at all levels of public administration (national, sectoral, regional, local, etc.). Existing problems are tightly connected and can be resolved only in the frame of integrated approach.

In our view, such approach should include:

1) Prioritisation of personal data protection issues in public informational policy, their maximum consideration in basic political documents (strategies,

concepts, plans, programs) on human rights and information security;

2) Improvement of the legal support of public administration in the field of personal data protection, in particular: - legislative specification of objectives, goals, principles, priorities, forms and methods of administering of personal data protection; - legislative definition of the entities involved in national policy on personal data protection, specification of their legal status, clear determination of their functions, powers and frameworks of competence;

3) Development of national program on personal data protection aimed at: - improving the institutional and legal framework of public administering; - minimising the risks and threats in the field of data processing; - gain control over legality of personal data proceeding; - struggling with the offenses in personal data protection sphere; - providing dynamic development of personal data protection system;

4) Increasing the staff of the Department on Personal Data Protection of Ombudsman's Secretary, filling vacant positions of the DPDP by professional, high-qualified personnel.

Since 2010, Ukraine has steadily expanded regulatory framework of personal data protection. During this time, central authorities adopted more than 50 regulatory legislative acts concerning the processing of personal data. Almost all local state administrations and executive committees of local councils approved statutory regulations of personal data, which also applies to subordinate structures (schools, institutions, enterprises, etc.).

In the recent years, Ukraine adopted a number of conceptual acts on personal data protection, in particular: Cyber Security Strategy of Ukraine, Strategy of development of Ukraine's Information Space, Information Security Doctrine of Ukraine and in addition, The National Standard "Information Technology. Methods of Protection. Key Provisions to Ensure Privacy (ISO / IEC 29100: 2011, MOD)", which provides the basis for compliance management processes with organisational and business requirements of personal data protection, was finalized.

However, despite the overall positive trends, rule-making activity in the field of personal data protection is accompanied by numerous problems, which significantly reduce its quality and efficiency. Among these problems we may list: - imperfect rulemaking technique (as a result, many regulations are characterised by ambiguity, contradictions and incompleteness); - unsystematic updating of regulations on personal data protection (regulatory changes are made asynchronously, adaptation of subordinate regulatory acts to legislative

novels is carried out with long delays); - slow development of key legal acts on personal data protection (sometimes development of some basic regulations can last for years).

These problems negatively affect the quality of regulation of personal data protection. Gradual loss of connection between local acts and central legislation (laws, government regulations, orders of ministries, etc.) greatly reduced the quality and timeliness of local provisions on personal data protection. With every update or change in national legislation, its provisions increasingly discord with the local acts, which are being updated very sluggishly. Eventually, this led to a large number of non-working rules, various inconsistencies and collisions, as well as to a broad “jumble” in law implementation.

In addition, this is not complete list of legislative issues in the field of personal data protection. In a survey of the officials (representatives of ministries, local state administrations, executive committees of regional and city councils), following issues were identified as the most common problems of legal regulation on personal data protection: 55% of respondents a lack of clarity and ambiguity of certain regulations; 40% of fragmentation and incompleteness of legislative acts; 35% of the internal inconsistency of regulations, and contradictions of certain provisions. (Petrytskiy, 2013)

Thus, we ought to state that currently almost all levels of institutional laws have inherent flaws, such as the defects of conceptual apparatus, fragmented regulation, inconsistent legal requirements, availability of conflicts, disharmonic structure, textual flaws and more. These flaws cannot be eliminated by disparate measures and “point” changes. At the time, there is a strong need to carry out a major upgrade of national informational legislation based on actual problems and urgent needs, practice, rule-making requirements, international obligations of Ukraine and EU recommendations. As part of this goal, a thorough review of the national information legislation on gaps, conflicts, duplications, completeness and structural consistency should be carried out.

The executive activity in the field of personal data protection implemented mainly through surveillance methods (including the systematisation of information on personal data), control (both field and distant inspections), prevention and suppression of offenses (as a rule, by drawing up appropriate regulations) and legal responsibility (administrative, disciplinary, etc.). (Petrytskiy, 2014)

During 2015, the DPDP held 62 scheduled and unscheduled inspections of personal databases, which belong to The Ministry of Internal Affairs, The

Ministry of Social Policy, State Migration Service of Ukraine and other state entities. The control measures showed that the most common violations in the field of personal data protection are:

- improper execution of the contractual relationship between the owner and manager of personal data (in many cases the written contracts are absent);
- an excess of personal data volume, specified in the contract with its owner;
- disparity of declared and actual purpose of personal data processing;
- processing of personal data without proper grounds;
- illegal dissemination of personal data;
- failure to face changes in the processing of personal data (change of personal data holder, change of personal data content, change of the purpose of personal data collection, change of persons to whom personal data is given);
- uncertainty of internal order on processing and protection of personal data;
- poor protection of the premises where the personal data are stored;
- failure to determine a structural unit or official organising works related to personal data protection (Rezultaty perevirok, 2016).

During the next years, the scope of the DPDP activities has been decreasing. In 2017 there were held only 13 inspections of state and private authorities, enterprises, organisations and institutions on the compliance with the requirements of the legislation on the personal data protection. In addition, in 2018 total number of such inspections decreased to 4 (Plan provedennia perevirok..., 2018).

Overall, the analysis of executive activities on personal data protection gives rise to the following conclusions.

Firstly, this form of public administration is implementing a predominantly coercive measures (surveillance, control, jurisdiction, etc.) aimed at dealing with the offenses in the field of personal data protection. Instead, positive methods of administering (information, persuasion, encouragement, etc.) are given only a secondary role. In our view, such an approach neither promotes harmonic regulation of relevant public relations, nor conduces to its progressive development. Indeed, despite the importance of coercive methods, the effectiveness of their use is very limited. They are a reaction to the negative processes that have already begun and are ongoing. It is vital to counter these

processes, but it is even more important to prevent their appearance, to develop a public awareness in obeying the law, to improve legal culture and social responsibility. Therefore, coercion should be combined with positive methods of public administration, to act as logical extensions when they did not bring positive results. In turn, the non-binding nature activities (advocacy, explanatory, educational, training, etc.) should take its rightful place among the methods of public administration in the field of personal data protection.

Second, the effectiveness of executive activity in the field of personal data protection is quite low. Even coercive methods that currently form the core of “executive tools” and are widely implemented do not bring sufficient results. Visual evidence of this is a low “density” of administrative control (for example, by 2015, in Ukraine there were registered about 40 thousand personal databases and at the same time were held only 62 inspections, most of which were distant), increasing the number of offenses in the field of personal data protection and, at the same time, high latency of such offenses (admittedly holders of personal data and officials ascertain the actual number of offenses in this area is much higher than official figures), numerous cases on repeated or systematic offenses (Gurzhiy 2014).

The main reasons for this disappointing state of affairs are: low material and legal support of control subjects, including the Ombudsman’s Secretary; ineffective coordination inside the system of public administration of personal data protection; duplication of administrative powers; archaic methodologies of qualification of informational offenses. In addition, Ukraine is facing a problem, typical for many European countries: the very selective implementation of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 On the protection of individuals with regard to the processing of personal data and on the free movement of such data. In particular, there is still undefined the institution and the attributions of the Data Protection Officer as a person, empowered to ensure the compliance with the legislation on the protection of personal data within the entity for which he is active – the entity that was necessarily involved in data processing operations. (Raul, 2017; Brezniceanu, 2017) The result is very poor coordination and collaboration between personal data holders and state authorities.

Elimination of all these factors should be the main priority of the state policy on personal data protection. For this purpose, it is advisable to provide a set of administrative measures (legal, organisational, informational, and logistical, etc.) in the framework of the state program on personal data protection.

## **Conclusion**

To sum up, we can state that the legal and organisational support of personal data protection in Ukraine now is in a phase of intensive development. In recent years, a radical upgrade of "thematic" legislation took place, the system of public control over legality in the field of personal data protection was improved, the mechanisms of processing personal data were optimized, basic demands on personal data protection were determined and new forms and methods of public administration were introduced.

However, within the context of this progress there is a wide spectrum of problems at all levels of rule-making and executive activities. Among them are: inconsistency of legislative regulations, disadvantages of their structure and content, rather weak administrative coordination, imbalanced system of public administration, the lack of staff and material resources, the absence of targeted development programs, limited scope of positive (non-binding) administrative methods and many others.

As a result, at the present stage the national system of public administration on personal data protection is characterised by inefficiency. In its activities, we may vividly observe numerous inconsistencies, duplications and internal conflicts. Its components are functioning apart, without proper level of cooperation and coordination. This situation requires a raft of measures aimed at optimisation of public administration system on personal data protection, as well as at the improvement of all its parts and subsystems. Among the most important steps in this direction should be:

- fundamental review of Ukrainian informational legislation (regarding the regulation of the personal data protection), elimination of its gaps, collisions, duplications and inconsistencies;
- harmonisation of regulations in the field of personal data protection, improving their structure and content;
- implementation of international legal standards on personal data protection into Ukrainian rule-making practice;
- constant monitoring of Ukrainian legislation on personal data protection, aimed at its harmonisation and consistent upgrade;
- strengthening of public control over rule-making and executive efficiency in the field of personal data protection;
- development and adoption of the state program on informational security and personal data protection, designed to provide

comprehensive implementation of informational state policy at the national, cross-sectoral and local levels;

- provide clear delineation of functions and powers of public administration in the field of personal data protection;
- creation of a special unit for coordination of public administrative activities in the field of personal data protection (according to most experts, such a unit should function under the auspices of the Ministry of Justice of Ukraine);
- increasing the staff number of the DPDP Ombudsman's Office due to objective needs of practice;
- implementation of profiling of public officials under the General Data Protection Regulation;
- improvement of forms and methods of public administering in the field personal data protection, creating favourable conditions (legal, organisational, economic, technical, etc.) to increase their efficiency.

Along with this, a wide range of normative, organisational and informational steps aimed at building an integral, multilevel system of personal data protection in Ukraine, should be made. It is possible only within the framework of informational policy based on the principles of planning, integrity, consistency, participation, transparency, consensus and responsibility. To this end, personal data protection must be declared a strategic direction of state informational policy and reflected in national legislation, strategic planning acts, as well as in political decisions of the state leadership.

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