

SAFEGUARDING MINORS' PERSONAL DATA: LEGAL PRINCIPLES IN INFORMATION SECURITY IN UKRAINE AND EUROPEAN

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**Abstrak:** Penelitian ini bertujuan untuk mengungkap peraturan hukum dalam melindungi data pribadi anak di bawah umur sebagai komponen penting dari keamanan informasi. Dengan menganalisis undang-undang Ukraina dan Eropa dibandingkan dengan Peraturan Perlindungan Data Umum dan Undang-Undang Privasi Konsumen California, penelitian ini mengeksplorasi cara-cara untuk mencegah penyalahgunaan informasi anak oleh pihak ketiga. Penelitian ini mengidentifikasi kewajiban otoritas negara dan badan hukum, berdasarkan undang-undang Ukraina dan Eropa, untuk melindungi data pribadi. Subjek penelitian, serta maksud dan tujuannya menentukan penggunaan metode kognisi ilmiah umum dan khusus. Hasil penelitian menunjukkan bahwa permasalahan problematis terkait pengumpulan, penyimpanan, penggunaan, pendistribusian data pribadi anak di bawah umur. Kewajiban untuk melindungi hak seseorang atas pengolahan dan pelestarian data pribadi atau informasi pribadi merupakan kewajiban otoritas negara sesuai dengan peraturan perundang-undangan Ukraina dan negara-negara Eropa (Jerman, Swiss, Prancis, Italia, Norwegia, Inggris Raya) serta badan hukum yang memiliki atau menyimpan data pribadi tertentu. Secara meyakinkan, perlindungan data pribadi muncul sebagai hak mendasar, yang merupakan bagian integral dari hak keluarga dan kehidupan pribadi yang lebih luas. Studi ini juga menggarisbawahi pentingnya mekanisme kerja sama internasional dalam mengatasi permasalahan multifaset ini.

**Kata kunci:** peraturan hukum, perlindungan data pribadi, perlindungan hak anak di bawah umur, data pribadi, keamanan informasi.

**Abstract:** The research aims to uncover the legal regulations pertaining to the protection of minors' personal data, considered a crucial component of informational security. Through an analysis of Ukrainian and European legislation, in conjunction with the General Data Protection Regulation and the California Consumer Privacy Act, this study seeks to explore preventive measures against third-party abuse of children's information. The research highlights the responsibilities imposed on state authorities and legal entities, based on Ukrainian and European legislation, to safeguard personal data. The methodology employed in this article involves the utilization of both general scientific and specialized methods of scientific cognition. The specificity of the research subject, along with its purpose and tasks, guided the selection of these methods. The research results reveal various problematic issues related to the collection, storage, use, and distribution of personal data of minors. The obligation to protect an individual's rights to the processing and preservation of personal data or private information is a responsibility placed on state authorities in accordance with the legislation of Ukraine and European countries (Germany, Switzerland, France, Italy, Norway, Great Britain), as well as on legal entities that own or store the specified personal data. In conclusion, the protection of personal data emerges as a fundamental right, integral to the broader rights of family and private life. The study also underscores the importance of international cooperation mechanisms in addressing this multifaceted issue.



**Key words:** legal regulation, protection of personal data, protection of the rights of minors, personal data, informational security.

## INTRODUCTION

Rapid technological changes and globalization have created new problems for protection of personal data. Processes of collecting and sharing personal data have increased significantly. Thanks to technologies available, today government bodies or private companies can use personal data for carrying out any activity. Individuals post their personal information publicly and make it accessible. The newest means of communication significantly simplify citizens' realization of their right to information, at the same time, with their help expanded are employers' opportunities regarding collecting, storing and processing information about their employees, as well as regarding rapid obtaining data from other sources.

In the present conditions of the global use of information technologies and management of information systems, private information about any person can become open, in case of unauthorized intervention, and it can become available for improper use of "private" data by other persons. The consequence of this unauthorized intervention in the "private" data of individuals may consist in causing significant moral and material damage.

The GDPR specifically mentions children as *vulnerable natural persons* who need special protection.<sup>1</sup> A comprehensive study of the problem of legal regulation of relations arising in connection with the processing, collection, storage, use, distribution of personal data of minors is necessary for introduction of an adequate legal mechanism for regulating relations regarding implementation and protection of personal data in Ukraine.

In her article "Protection of Personal Data in Ukraine under Martial Law" O.G. Rohova considers the issue of ensuring the security of personal data of citizens during martial law, in particular, violations in this area include intentional provision of personal data of a person to law enforcement agencies and provision of unreliable information about cooperation of such a person with the aggressor state; "leakage" of personal data of servicemen of the Armed Forces of Ukraine, numerous cyberattacks on the websites of the state bodies, etc. To protect personal data, specialists in the sphere of defense of national security and IT specialists are actively involved.<sup>2</sup>

Thus, in the monograph "Protection of Personal Data: Legal Regulation and Practical Aspects" O.M. Rodionenko considers the legal issues of the concept of personal data and the sources of their legal regulation; studied are the principles of personal data processing, among these principles the author singles out the following ones: legality, adequacy, compliance and non-excessiveness; the author examines the correlation between the concepts of "personal data" and "confidential information", in the opinion of the author, personal data can be classified as confidential information about a person, if personal data is not confidential information, it is open information, the issues of the grounds for processing sensitive categories of personal data are considered, the issues of legal positions of subjects of personal data, in particular owners and consumers; issues of personal data protection are analyzed.<sup>3</sup>

In the article "Protection of Personal Data in the Context of the Development of

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<sup>1</sup> General Data Protection Regulation. Official Journal of the European Union. (2016). Retrieved from <https://gdpr.eu/tag/gdpr/>

<sup>2</sup> Rohova O.G. "Protection of personal data in Ukraine under martial law." *Legal scientific electronic journal*. No. 9. (2022). 319-321. DOI <https://doi.org/10.32782/2524-0374/2022-9/77>

<sup>3</sup> 1. Bem M.V., Horodynskyi I.M., Sutton G., Rodionenko O.M. "Protection of personal data: Legal regulation and practical aspects." A scientific and practical guide. (2015). Kyiv. 220.

the Information Society: Prerequisites, Principles and International Legislation” T.I. Obukhoska analyzes the basic principles, international legal acts that regulate relations in the sphere of personal data protection.<sup>4</sup>

In the article “Modern Basics of Personal Data Protection in European Legal Acts” V.M. Bryzhko analyzes numerous European acts in the sphere of personal data protection, Conventions, general regulations, directives; summarizing the basic principles of personal data protection, the author offers specific conditions for the use of personal data, so personal data must be available to data subjects, such data must be accurate and updated, obtained in a legal way, processed for a legal purpose etc.<sup>5</sup>

In the article "EU Legislation in the Sphere of Personal Data Protection” V.O. Volosetskyi examines European laws on personal data protection, analyzes the main stages of the formation of the mechanism of personal data protection in the EU, examines EU directives in the sphere of personal data protection regulation, currently a single regulatory framework has been created for all countries of the European Union in terms of personal data protection.<sup>6</sup>

In the article “Responsibility for Violation of Legal Requirements in the Field of Personal Data Protection” O. Mervynskyi examines the issue of responsibility for violation of legislation on protection of personal data from the standpoint of human rights protection and the main factors that determine the conditions for liability of owners or managers of personal data bases for their actions , which are related to real, significant damage caused to a natural person as a result of illegal access to his/her personal data and illegal processing of these data.<sup>7</sup>

In the article “Processing and Protection of Personal Data in the Process of Verification of Social Benefits of Citizens” K.S. Melnyk examines the problematic aspects of processing and protection of personal data in the process of verification of social benefits to citizens, in particular, considered is a specific example of a legal entity that collected personal data of citizens from uncontrolled territories; the author suggests ways to overcome negative consequences of violation of privacy and information security of a person.<sup>8</sup>

In the article “International Experience of Legal Regulation of Personal Data Protection on the Internet” Leheza Ye. analyzes international experience of regulation of legal issues of personal data protection on the Internet.<sup>9</sup> The author examines Convention No. 108, the OECD Guidelines, researches the difference in the approaches of various national legislations and the main guidelines in the process of national regulation of personal data protection in this sphere.

The purpose of the article consists in highlighting problems related to collection, storage, use, distribution of personal data of minors as well as to development of methods

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<sup>4</sup> Obukhovska T. I. “Protection of personal data in the context of the development of the information society: prerequisites, principles and international legislation.” *Bulletin of the National Academy of State Administration under the President of Ukraine*. 1. (2014). 95-103.

<sup>5</sup> Bryzhko V.M. “Modern basics of personal data protection in European legal acts. ” *Journal "Information and Law"* 3(18). (2016). 45-57. doi: [https://doi.org/10.37750/2616-6798.2016.3\(18\).272967](https://doi.org/10.37750/2616-6798.2016.3(18).272967)

<sup>6</sup> Volosetskyi V. “EU legislation in the sphere of personal data protection.” *Evropský politický a právní discuz*. 3 (6). (2016). 50-54.

<sup>7</sup> Mervynskyi O. “Liability for violation of legal requirements in the field of personal data protection.” *Legal, regulatory and metrological support of the information protection system in Ukraine*, 1(22). (2011). 5-10.

<sup>8</sup> Melnyk K.S. Processing and protection of personal data in the process of verification of social benefits of citizens. *Journal "Information and law"*. 1(20). (2017). 39-44. [https://doi.org/10.37750/2616-6798.2017.1\(20\).272989](https://doi.org/10.37750/2616-6798.2017.1(20).272989)

<sup>9</sup> Korneyev, M., Zolotukhina, L., Hryhorash, T., Leheza Ye., Hryhorash O., (2018). The development of small business as a source of formation of local budget revenues in Ukraine. *Investment. Management and Financial Innovations*. 15 (1). P. 132-140. DOI:10.21511/imfi.15(1).2018.12

for protection of personal data of minors based on a comprehensive analysis of international acts, legislation of Ukraine, special literature and court practice materials on ensuring protection of personal data of underage persons.

Tasks for Achieving the Purpose:

1. Identification and Categorization of Issues:

- Precisely clarify and categorize problems associated with the collection, storage, use, and distribution of personal data of minors resulting from the illicit use of information by third parties. This includes a detailed exploration of the scope and nature of these problems.

2. Exploration of Preventive Measures and International Collaboration:

- Conduct a comprehensive search for effective strategies to prevent the abuse of information about children by third parties. Evaluate the role of the state in taking necessary measures and engaging in international cooperation mechanisms to address and resolve issues related to the protection of personal data of minors. Specify the international agreements or mechanisms that will be considered in the research.

By refining the tasks with additional details and considerations, the research can better guide the investigation and contribute to a more focused and impactful study.

## METHOD

The methodological basis of the research is represented as a comprehensive approach, which involves the use of general scientific, general scientific, interdisciplinary and special legal methods of studying human rights to an environment safe for life and health in legal doctrine, international law, national legislation and legal practice..

Comprehensive research, in the form of a literature review, was conducted using free access resources (Academic journals, Google Book Search, Google Scholar, Scientific periodicals of Ukraine), as well as the full-text database ScienceDirect.

The specifics of the research subject, as well as its purpose and tasks determined the use of general scientific and special methods of scientific cognition.. The hermeneutic method was used to establish content of the concept of “personal data protection” enshrined in both legislative acts and the legal doctrine. This method of analysis was used to interpret provisions of normative legal acts (the Civil Code of Ukraine, laws of Ukraine, international normative legal acts and regulations, etc.), which establish the order and features of personal data protection. With the help of the method of systematic analysis, court decisions issued in lawsuits regarding protection of personal data and, in particular, regarding the specifics of protecting personal data of minors during provision of consent for medical intervention or entering into contractual legal relations were studied. The dogmatic method made it possible to analyze scientific studies devoted to general problems of personal data protection and in more detail problems related to minor children. The comparative method was used to compare provisions of the civil legislation of Ukraine, the legislation of the EU and the USA in order to identify common features, differences, advantages and disadvantages between them. The method of generalization helped to formulate conclusions that summarized the conducted research.

Thus, modern domestic scientific research is mostly based on such a general scientific method as *dialectical one*. In general, dialectics as a science studies the most general laws of the development of nature, society and thinking. The dialectical method is such a general scientific method of cognition that needs to take into account relationship and constant development of phenomena in the process of cognition of reality. Dialectics as a method of learning information about nature, society and thinking, considered in unity

with logic and the theory of knowledge, is a fundamental scientific principle of studying multifaceted and contradictory reality in all its manifestations.<sup>10</sup>

This method “was developed over many centuries by scientists of various philosophical and political directions” and consists in such an approach to studying phenomena of social existence, which is based on the general regular connections of development of society, the state and nature.<sup>11</sup>

Therefore, according to the dialectical method, all phenomena are interconnected and dynamic. The basis of their development (dynamics) includes such laws of dialectics as transition from quantity to quality, struggle and unity of opposites, etc.

As for the topic of the research, thanks to the dialectical method, the current state of personal data protection and understanding of the essence of this legal phenomenon was established, taking into account their dynamics, development during historical time and taking into account their interdependence with other phenomena of social and state life, interrelation of one relationship with other ones.

Application of the *axiological method* was aimed at clarifying and determining the public danger of violations in the sphere of personal data as well as at the public utility of state activity to overcome these violations.

The *hermeneutic method* made it possible to reveal the dependence of interpretation of normative legal acts or provisions set forth in scientific texts on the subject of interpretation, to reveal the content of legal norms and scientific knowledge, based on the peculiarities of legal normative legal and scientific language.

Humanization of domestic legislation and determination of the priority of a person, his/her rights and freedoms in relation to interests of the state determines the need to use a *humanistic method* in order to consider protection of personal data. As a result, it is concluded that *the state and laws* have a human nature, that is, they are created, act and are intended to provide for the needs of society and humans.

The formal-legal method was used to determine specifics of the normative-legal regulation of social relations in the sphere of personal data protection.

The comparative-legal (comparative-historical, comparative-structural, comparative-functional, comparative-axiological, comparative-typological, comparative-linguistic, comparative-semiotic, comparative-legal, comparative-philosophical, comparative-political, etc.) for studying general, special and unique features between interpretation of the essence and content of personal data, as well as their protection in domestic legal and scientific doctrine in relation to the foreign one, etc..

So, outline of the methodological foundations of researching legal bases of personal data protection allowed us to reach several conclusions.

Firstly, both the breadth of cognitive opportunities for extracting new knowledge about the subject of study and the adequacy of the obtained results depend on the methodological toolkit.

Secondly, the subject of research lies in the plane of several sciences, which requires the use of a wide range of general, philosophical, general scientific, partially scientific and special research methods.

Thirdly, only the complex use of methodological approaches and research methods will contribute to an objective, comprehensive, complete disclosure of the subject of study of this scientific work.

Thus, the complexity and multifacetedness of the research subject, the goal and task set in this dissertation, require definition of worldview, philosophical, scientific and

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<sup>10</sup> Sheyko V. . “Organization and methodology of scientific research activity: a textbook”. 2nd edition. (2002). Kyiv: Znannia-Press, Ukraine.

<sup>11</sup> Maksimov S.I. “Problems of the methodology of modern legal science. *Bulletin of the Academy of Legal Sciences of Ukraine*”. Vol. 1. (1997). 146-150

theoretical foundations, as well as a comprehensive use of a wide range of general, philosophical, general scientific, partially scientific and special research methods. It is this approach that will contribute to a full, comprehensive, objective disclosure of the specifics of the legal basis for personal data protection.

## RESULTS AND DISCUSSIONS

In accordance with Article According to the Constitution of Ukraine, a person, his/her life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine. Human rights freedoms and their guarantees determine content and direction of state's activity [13]. It is not allowed to collect, store, use and distribute confidential information about a person without his/her consent, except in cases specified by law, and only in the interests of national security, economic well-being and human rights (Article 32).<sup>12</sup> giving an official interpretation of the first and second parts of Article 32 of the Constitution of Ukraine the Constitutional Court of Ukraine considers that information about a person's personal and family life (personal data about him/her) is any information or a set of information about a natural person who is identified or can be specifically identified, namely: nationality, education, marital status, religious beliefs, state of health, financial status, address, date and place of birth, place of residence and stay, etc., data on personal property and non-property relations of this person with other persons, in particular with family members, as well as information about events and phenomena that occurred or are occurring in the domestic, intimate, social, professional, business and other spheres of this person's life, with the exception of data related to the exercise of powers by a person holding a position related to performance of functions of the state or local self-government authorities. Such information about a natural person and members of his/her family is confidential and can be shared only with their consent, except for cases specified by law, and only in the interests of national security, economic well-being and human rights.<sup>13</sup>

The issue of legal protection of personal data is one of the most difficult issues in the era of information technologies. In the context of globalization, user data originating from one country can be accessed and used by third parties from anywhere in the world illegally.<sup>14</sup>

The development of the right to privacy began with its recognition at the international level and later implementation at the national level. Normative consolidation of personal data protection originates from international human rights treaties that guaranteed the right to privacy. For example, in Article 12 of the Universal Declaration of Human Rights of 1948, it is stated that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation."<sup>15</sup> Everyone has the right to the protection of the law against such interference

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<sup>12</sup> Constitution of Ukraine. Adopted at the fifth session of the Verkhovna Rada of Ukraine on June 28, 1996 Bulletin of the Verkhovna Rada of Ukraine. 1996. No. 30. Art. 141. Retrieved from [//zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text](http://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text)

<sup>13</sup> Decision of the Constitutional Court of Ukraine in the case of the constitutional submission of the Zhashkiv District Council of the Cherkasy Region regarding the official interpretation of the provisions of the first and second parts of Article 32, the second and third parts of Article 34 of the Constitution of Ukraine No. 2-pп/2012 of 20.01.2012. Retrieved from: <http://www.ccu.gov.ua/uk/doccatalog/list?currDir=167724>

<sup>14</sup> Leheza, Yevhen. Pisotska, Karina. Dubenko, Oleksandr. Dakhno, Oleksandr. Sotskyi, Artur "The Essence of the Principles of Ukrainian Law in Modern Jurisprudence." *Revista Juridica Portucalense, December, (2022)*. 342-363. DOI: [https://doi.org/10.34625/issn.2183-2705\(32\)2022.ic-15](https://doi.org/10.34625/issn.2183-2705(32)2022.ic-15)

<sup>15</sup> Universal Declaration of Human Rights. United Nations. (1948) Retrieved from:

or attacks.”<sup>16</sup>

The case “Leander v. Sweden” was an example of solving the issue of interference with the right to respect for private life.<sup>17</sup> The European Court of Human Rights ruled in its decision that storage and disclosure of information about the applicant’s private life by the police constituted an interference with his right to respect for private life, which is guaranteed by Article 8 of the Convention. The Court confirmed that such interference can only be admissible under appropriate conditions, in particular if it complies with the law, pursues the legitimate aims specified in Article 8 of the Convention and is necessary for achievement of such aims.

The following decisions of the European Court of Human Rights testify to unique appeals regarding the protection of personal data rights. In the case “Garnaga v. Ukraine” (application No. 20390/07, decision dated 16/05/2013) the impossibility of changing the person’s patronymic is fixed at the legislative level. The case “Gaskin v. the United Kingdom” (application No. 10454/83, decision dated 07/07/1989) was the reason for considering the issue of limiting the person’s access to a part of the documents regarding his upbringing by the guardian/foster parents. It was proven that there was no independent body that would consider the request for access to part of the specified documents. Another example is the case of “I. v. Finland” (application No. 20511/03, decision dated 17/07/2008). In this case the issue of lack of accounting of transactions regarding provision of access to medical documentation was disclosed, which led to the impossibility of establishing the person who probably disseminated the information contained in this documentation.<sup>18</sup>

Such cases have become the subject of constant consideration by the European Court of Human Rights, and its practice in this field has become an integral part of the legal regulation of personal data processing issues.

Since 1992, the Law of Ukraine “On Information” dated 02 October, 1992 has been in effect in Ukraine, so, in accordance with Article 11 of the Law of Ukraine “On Information”, information about a natural person (personal data) is information or a set of information about a natural person who is identified or can be specifically identified.<sup>19</sup> Confidential information about a natural person includes, in particular, data about his/her nationality, education, marital status, religious beliefs, state of health, as well as address, date and place of birth. Personal data is information or a set of information about a natural person who is identified or can be specifically identified.

In the absence of special legal norms, the Law of Ukraine “On the Protection of Information in Information and Communication Systems” regulates to a certain extent relations regarding protection of employee’s personal data.<sup>20</sup> Today, the changes to Part 5 of Article 8 of the Law of Ukraine “On the Protection of Information in Information and Communication Systems” are particularly relevant: “ to ensure proper functioning of

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<https://www.un.org/en/about-us/universal-declaration-of-human-rights>

<sup>16</sup> Dymko, I., Muradian, A., Manzhula, A., Rudkovskiy, O., Leheza, Ye. “Integrated approach to the development of the effectiveness function of quality control of metal products”.. *Eastern European Journal of Enterprise Technologies*. 6/3 (90). (2017). 26-34. doi: 10.15587/1729-4061.2017.119500.

<sup>17</sup> The European Court of Human Rights (Fifth Section), application (no. [37075/09](#)), case ”Leander v. Sweden”. (2011). Retrieved from: <https://hudoc.echr.coe.int/eng?i=001-107183>

<sup>18</sup> Leheza, Ye. O., Filatov, V., Varava, V., Halunko, V., Kartsyhin, D. “Scientific and practical analysis of administrative jurisdiction in the light of adoption of the new code of administrative procedure of Ukraine.” *Journal of Legal, Ethical and Regulatory Issues*. Vol. 22, Issue 5. (2019). 1-8. Retrieved from <https://www.abacademies.org/articles/scientific-and-practical-analysis-of-administrative-jurisdiction-in-the-light-of-adoption-of-the-new-code-of-administrative-proced-8634.html>

<sup>19</sup> About information: Law of Ukraine dated October 2, 1992. Information of the Verkhovna Rada of Ukraine. 1992. No. 48. Article 650

<sup>20</sup> On the protection of information in information and communication systems: Law of Ukraine dated 16.12.2020. Retrieved from <https://zakon.rada.gov.ua/laws/show/80/94-%D0%B2%D1%80#Text>

systems and protection of information processed in them owners of systems shall: create backup copies of state information resources and systems in compliance with the requirements for their protection, integrity and confidentiality established for such resources and systems; ensure creation of backup copies of state information resources and systems on separate physical media in encrypted form and their subsequent transfer (movement) for storage in accordance with the procedure established by law, including outside the borders of Ukraine (in particular, in foreign diplomatic institutions of Ukraine), during the period of validity of the legal regime martial law in Ukraine and six months after its termination or cancellation; ensure transfer (movement) of state information resources and their backup copies for placement on cloud resources and/or data processing centers located outside Ukraine during the period of the legal regime of martial law in Ukraine and six months after its termination or cancellation”.<sup>21</sup> These changes are a guarantee of the preservation of state information resources during the martial law.

On 27 April, 2016, the European Parliament adopted a general regulation on the protection of personal data in EU countries (General Data Protection Regulation (GDPR)).<sup>22</sup> According to the GDPR, “personal data” means any information relating to an identified or identifiable natural person (“data subject”); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.<sup>23</sup>

The General Regulation of Personal Data Protection is a new procedure for processing personal data. What is new is that it applies not only to EU countries, but also has extraterritorial effect and applies to everyone who is subject to the legislation of the European Union. It is used in those cases when the company processes personal data of those people who are in the EU, or when it is a Ukrainian company established in the EU, or if it has some department there.

It is necessary to immediately define the terms of the GDPR in order to understand who the subjects are in the future:

A controller is someone who collects data and determines the purpose and goals of such an operation. The operator is a natural or legal entity that processes personal data on behalf of the controller. Personal data - any information relating to a natural person that can identify him.

According to California Consumer Privacy Act (CCPA, 2018 p.) personal information is information that identifies, relates to, or could reasonably be linked with a specific individual or household. For example, it may include your name, social security number, email address, records of purchased products, web browsing history, geolocation data, fingerprints, and inferences from other personal information that may create a profile about your preferences and characteristics.<sup>24</sup> The California Consumer Privacy Act of 2018

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<sup>21</sup> Leheza, Y., Shcherbyna, Bogdan. Leheza, Yulia. Pushkina, Olena & Marchenko O. “Features of Applying the Right to Suspension or Complete/ Partial Refusal to Fulfill a Duty in Case of Non-Fulfilment of the Counter Duty by the Other Party According to the Civil Legislation of Ukraine.” *Revista Jurídica Portuguesa*, (2023). 340–359. Retrieved from <https://revistas.rcaap.pt/juridica/article/view/29662>

<sup>22</sup> General Data Protection Regulation. Official Journal of the European Union. (2016). Retrieved from <https://gdpr.eu/tag/gdpr/>

<sup>23</sup> Leheza, Ye. Shablysty, V. Aristova, I. V. Kravchenko, I. A. Kornikova, T. (2023). “Foreign Experience in Legal Regulation of Combating Crime in the Sphere of Trafficking of Narcotic Drugs, Psychotropic Substances, their Analogues and Precursors: Administrative and Criminal Aspect.” *Journal of Drug and Alcohol Research*. Vol. 12 . No. 4, 1-8. DOI: <https://doi.org/10.4303/JDAR/236240>

<sup>24</sup> Korniienko, M. Desyatnik, A. Didkivska, G. Leheza, Ye. Titarenko, O. (2023). Peculiarities of investigating criminal offenses related to illegal turnover of narcotic drugs, psychotropic substances, their analogues or

(CCPA) gives consumers more control over the personal information businesses collect about them. This Act enshrines a wide list of privacy rights, including: the right to know about the personal information the business collects about them and how it is used and shared; the right to delete personal information collected about them; the right to opt out of the sale or distribution of their personal information; the right to non-discrimination in exercising their rights under the CCPA; the right to have inaccurate personal information that the business has about them corrected; and the right to restrict the use and disclosure of confidential personal information collected about them. In addition, personal data protection issues in the US are governed by specific sector laws and regulations, such as the Health Insurance Portability and Accountability Act (HIPAA) for medical data and the Gramm-Leach-Bliley Act (GLBA) for financial data. An important role in providing protection against unfair practices in the collection and use of personal data is also played by the Federal Trade Commission (FTC). As we can see from the above, according to the subject criterion and content, they hardly differ from each other. But the content of identifying information about a person is quite different.<sup>25</sup>

General Data Protection Regulation in the EU countries (GDPR) regulates the procedure of processing of personal data in the EU countries; it also applies to the countries of the European Economic Area: Iceland, Liechtenstein, and Norway. Unlike its predecessor Data Protection Directive 95/46/EC of 1995, this act is a regulation and has direct effect, that is, it is subject to immediate implementation in all participating states at the same time. Although some issues in the context of processing of personal data can be decided independently by participating countries, the basic concepts are unchanged for all countries in which the GDPR applies. The regulation protects fundamental rights and freedoms of individuals, in particular, their right to protection of personal data.<sup>26</sup>

Also, clause 75 of the introductory part of the general regulation (GDPR) separately mentions children as vulnerable natural persons who need special protection. Clause 38 in the introductory part of the GDPR states that children need special protection with regard to personal data, as they may be less aware of the risks, consequences and safeguards associated with processing of their data. In particular, protection of children's data should apply in cases where their personal data is used for marketing, profiling or collecting data about children when using services offered to children.<sup>27</sup>

It should be noted that unlike other provisions of the GDPR, information society services are such services that are provided online. According to Article 8 of the GDPR "Minors" are children below 16 years of age. However, the GDPR allows member states to lower this minimum age to 13 years. For example, the lowest age for children's personal consent to processing of their data was set in Scandinavia, Great Britain and Poland, and the highest limit was determined in Germany, Croatia and Italy.<sup>28</sup>

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DOI: <https://doi.org/10.15575/kh.v5i3.31742>.

<sup>25</sup> Shkuta, O., Karbovskiy, D., Pushkina, O., Potip, M., Varhuliak, O. Object and Subject of State Control in the Sphere of Legal Turnover of Narcotic Drugs, Psychotropic Substances and their Precursors in Ukraine: Administrative, Criminal and Civil-Legal Aspect. *Journal of Drug and Alcohol Research*. 2023, 12(7), 236-255. DOI: <https://doi.org/10.4303/JDAR/236255>

<sup>26</sup> Volobuieva, O. Leheza, Ye. Pervii, V. Plokhuta, Ye. Pichko, R. "Criminal and Administrative Legal Characteristics of Offenses in The Field of Countering Drug Trafficking: Insights from Ukraine." *Yustisia*. Vol 12, No 3. (2023). 262-277. DOI: <https://doi.org/10.20961/yustisia.v12i3.79443>

<sup>27</sup> General Data Protection Regulation. Official Journal of the European Union. (2016). Retrieved from <https://gdpr.eu/tag/gdpr/>

<sup>28</sup> Smokov, Sergii M., Horoshko, Valentyna V., Korniienko, Maksym V. Medvedenko, Serhii V. (2022). Rule of Law as a Principle of Criminal Procedure (on materials of the European Court of Human Rights). *Pakistan Journal of Criminology*, 14(3), 37-46. Retrieved from: <http://www.pjcriminology.com/publications/rule-of-law-as-a-principle-of-criminal-procedure-on-materials-of-the-european-court-of-human-rights/>

Clause 1 of Article 8 of the GDPR shall be applied only if the offer of information society services is *directly*, exclusively or mainly provided to children. The following three examples can be given: 1) proposal is made in a simplified, informal language for easier perception and assimilation by children; 2) offered goods are intended specifically for children, such as children's literature or goods for school; 3) offer directly indicates that it is the children who must accept the offer, i.e. persons before reaching the age of majority (for example, the text of the offer states "only for children").<sup>29</sup>

Regarding the processing of personal data, the Grand Chamber of the Supreme Court of Ukraine has established specific principles that must be followed, including openness and transparency, accountability, adequacy, and ensuring that the composition and content of data are not excessive in relation to the specified purpose of processing.<sup>30</sup>

In addition, personal data may be processed only with the express consent of the person whose data is being processed. On 19 September, 2018, when considering the case No. 806/3265/17 (proceedings No. 11-460zai18), the Grand Chamber of the Supreme Court protected the right of an individual, provided for in Article 32 of the Constitution of Ukraine, which, in particular, enshrines the prohibition of collection, storage, use and distribution of confidential information about a person without his/her consent, except for cases specified by law.<sup>31</sup>

Regarding the use of a website that can be used by underage persons or minors, in accordance with the requirements of the GDPR, it is necessary to set up such a website in a certain way, namely: 1) analyze whether the provisions of the GDPR regarding children can affect a legal entity. It is mandatory to check the presence or absence of additional national rules that apply to the sphere of activity of the relevant legal entity; 2) set up a system capable of checking the child's age; 3) services offered directly to children must be accompanied by clear information that can be easily understood by children.<sup>32</sup> Careful consideration should be given to ensure that T&Cs and privacy policies are written in a language that can be understood by children and that helps to make an informed choice. This will allow the child to make an optimal decision and consider whether he/she wants to transfer his/her personal data in exchange for access and interaction with the offered products and services. A great example of a legal entity making efforts in this area is the BBC with their Get Out and Grow privacy policy; 4) introduce measures to check identity of the parents of an individual who wishes to use the services; 5) describe parental rights regarding data about their child and the procedures that should be used to exercise these rights; 5) give parents access to their child's personal information to review and/or delete information; 6) to ensure that personal information collected on the Internet from a child is kept only for as long as it is necessary to fulfill the purpose for which it was collected. When it is no longer needed, it is imperative that the information is deleted, using security measures to protect against unauthorized access or use.<sup>33</sup>

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<sup>29</sup> General Data Protection Regulation. Official Journal of the European Union. (2016). Retrieved from <https://gdpr.eu/tag/gdpr/>

<sup>30</sup> Leheza, Y., Shcherbyna, Bogdan. Leheza, Yulia. Pushkina, Olena & Marchenko O. (2023). "Features of Applying the Right to Suspension or Complete/ Partial Refusal to Fulfill a Duty in Case of Non-Fulfillment of the Counter Duty by the Other Party According to the Civil Legislation of Ukraine." *Revista Juridica Portucalense*, 340–359. Retrieved from <https://revistas.rcaap.pt/juridica/article/view/29662>

<sup>31</sup> The Supreme Court protected a person's right to non-interference in personal life in connection with the processing of personal data. (2018) Retrieved from <https://supreme.court.gov.ua/supreme/pres-centr/news/558538/>

<sup>32</sup> General Data Protection Regulation. Official Journal of the European Union. (2016). Retrieved from <https://gdpr.eu/tag/gdpr/>

<sup>33</sup> General Data Protection Regulation. Official Journal of the European Union. (2016). Retrieved from <https://gdpr.eu/tag/gdpr/>

Unfortunately, there is no clearly defined answer as to how to make sure that it is the child's parents who give their consent to the processing of personal data. But some methods of identifying a person and providing consent can be distinguished, in particular: send a copy of the passport or ID card of the person by e-mail; send a letter in which parents allow the processing of personal data with their signature also by e-mail; process online orders through the parent's credit card; by phone call to parents. All of these methods are reliable, but they are difficult to implement in practice, and even more difficult to be followed for both parents and children. Therefore, in some cases, the well-known double opt-in method can be used.

## CONCLUSION

1. So, in the course of the scientific research, problematic issues related to collection, storage, use, distribution of personal data of minors, which arise as a result of the illegal use of information about a child by third parties, were identified.

Measures to introduce additional protection of personal data of minors against improper exchange of personal data during collection and processing of personal data can include:

- Determining privacy settings in applications to “do not share”, by default, and when activating “sharing mode”, which includes a clear, child-friendly explanation of advanced features and risks;

- Companies that develop websites, online games should take into account the opinion of children, by consulting with experts from child rights defenders on effective ways to protect children's personal data;

- Companies that develop websites, online games must consider the level of child's “competence”, that is, whether children have the capacity to understand the consequences of collection and processing of their personal data. If minor children have this capacity, then they are considered competent to give their own consent to processing, if children are not competent, then from the point of view of data protection, their consent is not “informed” and therefore such consent is not valid. In such a situation, *parental consent* will be required;

- *Invalidating a deed* is possible to be considered as a way to protect personal data, so when concluding a deed with a child, the child's capacity to give consent to the processing of personal data must be taken into account. For example, in Scotland the age of a child who has the right to enter into contracts for the processing of personal data is 16 years. In Great Britain, the age of children with the necessary amount of legal capacity to enter into a contract is not determined. As a rule, children over the age of seven can enter into contracts that can later be declared invalid, that is, under such a contract, the child cannot be obliged to perform what he/she agreed to or force him/her to perform it. If the contract is invalid, the company has no legal basis for processing personal data of children as participants in this contract. As a rule, the legal basis for processing of children's personal data should be presented as legal acts aimed at protecting children's rights and the purpose of which consists in realization of public interests carried out by state authorities or legal entities to which relevant powers have been delegated, in particular such bodies can include the service in children's affairs or other jurisdictional bodies;

- Obtaining a copy of personal data by children and their parents, correcting inaccurate personal data, filling in incomplete data, exercising the right to be “forgotten” and the right to “erase” personal data;

— Compensation for property and material damage for improper use and distribution of personal data of a minor by third parties.

2. Attention is drawn to the fact that if there is a rule in the legislation of the state regarding restriction of processing of personal data of minors under certain circumstances, then children aged 14 to 18 may object to processing of personal data, which is carried out on legal grounds in the implementation of a public task or other legitimate interests. At the same time, the mentioned technologies should not be without alternative and forced. Persons who refused to process their personal data should have an alternative — the use of other traditional methods of personal identification in accordance with the current domestic legislation.

Adding a few real case examples can enrich the article and help readers understand the practical application of the proposed solutions. In addition, personal data may be processed only with the express consent of the person whose data is being processed. On 19 September, 2018, when considering the case No. 806/3265/17 (proceedings No. 11-460zai18), the Grand Chamber of the Supreme Court protected the right of an individual, provided for in Article 32 of the Constitution of Ukraine, which, in particular, enshrines the prohibition of collection, storage, use and distribution of confidential information about a person without his/her consent, except for cases specified by law. According to the GDPR parental consent is one of the legal bases for processing data of children under the age of 16 (Chapter 2 Article 8). Therefore, if a ringtone is sold to minors for smartphones, the personal data collected during the purchase (name, surname, email address, payment details) will be “necessary for performance of a contract to which the data subject is a party, or for taking actions at the request of the data subject before concluding the contract” (Article 6, Part 1 letter b).

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