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PROCESSING OF PERSONAL DATA AND ITS REGULATION IN ARMENIA

The growing automation of the current daily operations of the business entities and the role of digital technologies in the economy constantly address the issues related to the regulation of personal data processing. We hereby aim at focusing on certain rules to be observed during the personal data processing. We will start discussing personal data and other general issues, then we will move to the principles of personal data processing and consider certain separate rules thereof and finally focus on the liability for violating the rules of personal data protection.

What are personal data and its processing?

The concept of **personal data**, as well as the concept of **personal data processing** and other concepts, shall be defined in Article 3 of the RA **Law** on Protection of Personal Data¹ (hereinafter referred to as the Law).

Thus, when using “**personal data**”, we mean “any information relating to a natural person, which allows or may allow for explicit or implicit identification of a person’s identity”. Obviously, we are going to discuss the processing of information pertaining to a natural person. However, is it obvious what kind of information on a natural person may be qualified as “personal data”? The study of the advisory decisions and guidelines² of the **Personal Data Protection Agency** allows us to specifically assert that the concept “personal data” is used in a broad sense including the whole information on the natural person’s private and family life in addition to the information basically identifying the person. By the meaning of the Convention for the Protection of Individuals with regard to Automatic

Processing of Personal Data³, this approach complies with the definition of “**personal data**”, namely “any information relating to an identified or identifiable individual”.

Examples of personal data may include the following:

- Passport data, date of birth, voice and appearance of the natural person;
- Information relating to the person’s

race, nationality or ethnic origin, political views, religious or philosophical beliefs, membership to the trade union, sex life (personal data of a special category);

- The natural person’s confidential medical information (as prescribed in the Law (special or biometric data, depending on the content of the information) and the RA Law on Medical Assistance and Service to the Population⁴);



¹ <https://www.arlis.am/DocumentView.aspx?docid=98338>

² <http://www.justice.am/page/609>

³ <https://www.arlis.am/DocumentView.aspx?DocID=80554> The Convention has been in force for Armenia since 01.09.2020

⁴ <https://www.arlis.am/documentview.aspx?docid=104958>



- The Employee’s personal data to be protected by the Employer (as prescribed in the Labour Code⁵ and the Guideline by the Personal Data Protection Agency⁶).
- Information on the natural person disclosed during the provision of services to the natural persons (banking secret⁷, insurance secret⁸, types of electronic communication service⁹, etc.).

Personal data processing is a considerably broad concept and irrespective of the form and mode includes all the operations related to “collection either stipulation or input or systematization or organization or storage or use or alteration or restoration or transfer or rectification or blocking or destruction of personal data or to carrying out other operations”.

To put it simply, any action taken to obtain personal data, as well as any further action is taken in regard thereto shall be considered as personal data processing.

It is worthwhile to mention although our legislation does not distinguish between the concepts of “**controller**” and “**processor**”, the used concept of “processor” includes the meaning of “controller” as well. In the essence, one can argue that in terms of the regulation, the person receiving personal data; i.e.

the collector, and the further processor of the personal data by the assignment of the collector comply with the same rules set forth for the processor of the personal data. Practically it means that the company receiving personal data, as a general rule, should transfer the personal data to another processor upon the consent of the personal data subject¹⁰ for carrying out the processing with the purpose and in the volume specified in the consent. Moreover, any subsequent processor to whom the personal data was transferred, again as a general rule, should provide the same level of personal protection and guarantees as to the initial processor.

It is important to know that for processing the biometric and special category personal data one should notify the Personal Data Protection Agency as well as provide additional security rules prescribed for the processing of the mentioned information.

Certain characteristics of the personal data processing

The RA Constitution (Article 34) enshrines the right to the protection of personal data stipulating that the personal data processing should be performed in good faith and for the purpose prescribed by law, upon the person’s consent or without such consent in case there exists another legitimate ground prescribed by law.

Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data stipulates that “*Personal data undergoing automatic processing shall be:*

- a. obtained and processed fairly and lawfully,
- b. stored for specified and legitimate purposes and not used in a way incompatible with those purposes,
- c. adequate, relevant and not excessive in relation to the purposes for which they are stored,
- d. accurate and, where necessary, kept up to date,
- e. preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored”.

The principle-rules stipulated by the Constitution and the Convention are reflected in the Law. Its practical significance is that:

1. personal data shall be processed, as well as be stored in compliance with the requirements prescribed by law,
2. the personal data should be processed upon the consent of the personal data subject except for the cases provided by law when the consent of the subject for the personal data processing is not required. For instance, in accordance with the RA Law on State Registration of Legal Entities, Separated Divisions of Legal Entities, Enterprises and Individual Entrepreneurs, “the information in the Unified State Register shall be open for general information” or the information on the registration of legal entities including personal data, shall be available to any person without the consent of the data subject,
3. the personal data can be processed for the purpose it was collected. The purpose shall be stipulated by law or upon the consent of the personal data subject,
4. the purpose of personal data processing should be lawful. For

⁵ <https://www.arlis.am/DocumentView.aspx?docid=143703>
⁶ http://www.justice.am/storage/uploads/002employee_guide-10.04.2017.pdf
⁷ <https://www.arlis.am/documentview.aspx?docid=51416>
⁸ <https://www.arlis.am/documentview.aspx?docid=51416>
⁹ <https://www.arlis.am/documentview.aspx?docid=140773>

¹⁰ Without the consent of the personal data subject, the personal data may be transferred to the third parties except for the cases provided by law. For instance, by the Law on Medical Assistance and Service to the Population, the medical secret can be transferred to the third parties prescribed by law and in cases as required by law.



instance, the personal data cannot be processed for preparing illegal act irrespective of the consent on processing given by the personal data subject,

5. the personal data should be collected, processed and stored to the extent necessary for pursuing the objective of processing. Where the necessity of personal data processing, including the established retention period, no longer exists the personal data shall be deleted as of a general rule.

During the process of collecting and processing personal data, it is also important to:

1. obtain the personal data subject's consent, including when the personal data subject is an employer and the company acts as an employee, i.e. processor,
2. consider the necessity of having a privacy policy and cookies policy where the services provided by the company imply direct processing of
3. a considerable amount of personal data, for instance, mobile banking. In this case, the mentioned policies need to comply not only with the RA Law where the company service

shall not be limited to Armenia and/or the users shall not be limited to the citizens of Armenia. It will be necessary to observe the regulations of the countries which jurisdiction may apply to the given processing of personal data,

4. upon the consent of the personal data subject, transfer the personal data to the third parties, for instance, the company providing accounting services to the company or cloud computing service providers, as well as have the appropriate contractual regulations with those third parties by regulating the obligations and liability in relation to the personal data processing,
5. in the case of transferring the personal data to another country make sure the personal data subject has given his/her consent to that and the given country is included in the list of the countries providing an adequate level of personal data protection and in case of not being included obtain the consent of the Personal Data Protection Agency before such transfer. In practice, those cases are considered transfers to another country when the third party receiving personal data is a foreign person or the personal data are de facto

transferred to the clouds in the territory of another country.

Personal data protection and liability

In Armenia, the **Personal Data Protection Agency** carries out administrative control over personal data protection.

Article 189.17 of the Code of the Administrative Offences¹¹ envisages liability for violating the requirements of the Law. Depending on the violation, the liability may range between AMD 50,000 and AMD 500,000.

It is important to know that the Criminal Code of the Republic of Armenia¹² criminalizes the illegal collecting, keeping, use, or dissemination of the information pertaining to personal or family life (Article 144), divulging medical secret (Article 145), as well as illegal collection or disclosure of commercial, insurance or banking secret (Article 199). For instance, the use of a person's information considered personal or family secret without his/her consent, as well as the dissemination, collection, or storage of such information unless provided for by law through public speeches, publicly displayed works or media are punished with a fine for the amount of AMD 200,000-500,000 or with arrest for the term of 1-2 months.

¹¹ <https://www.arlis.am/DocumentView.aspx?docid=73129>

¹² <https://www.arlis.am/DocumentView.aspx?docid=145003>