

Respect For Privacy In European Context

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Abstract

Articles 7 and 8 of the Charter of Fundamental Rights of the European Union state that respect for private life and the protection of personal data are closely related but are considered separate fundamental rights. The Charter is incorporated in the Treaty of Lisbon, and therefore has binding legal force for all European Union institutions and bodies, as well as all Member States when they implement European Union legislation.

Objective: The right to privacy to be reflected in the same way in the provisions of the GDPR. Council of Europe Convention 108 was adopted for the protection of individuals in relation to automation. Its purpose is to establish that all persons respect their fundamental rights and freedoms, namely the right to privacy in relation to the automatic processing of their personal data.

The Personal Data Processing Act of 28 January 1981 is the first legally binding international instrument specifically adopted in the field of data protection.

Purpose: A new paper to merge GDPR with Convention 108+

Keywords: fundamental rights, privacy as a right, personal data, freedom, automatic processing

1. Introduction

The protection of personal data is considered a newly regulated fundamental right in the two European organizations that Romania is part of, namely the Council of Europe and the Greater European Union. In both institutions, the courts issued interesting decisions at the European level, as well as decisions related to Romania. Therefore, Romania directly benefited from the legislation on confidentiality and data protection, and in this work we will consider: (a) the basic elements of the Convention for the Protection of Individuals from the Processing of Personal Data (Convention 108, examined below), (b) the fully automated international context of the adoption of Convention 108 by the Council of Europe, which is an international organization independent of the European Union. The European Council, as one of the institutions of the European Union, includes the leaders of the member states and sets the political guidelines and priorities of the European Union. The Council of Europe is an organization that has an important role in the protection of human rights. (c) the latest situation in the European Union now, a concept related to the many sources that are constantly being developed, including the importance of Convention 108 in the interpretation of the Court of Justice, (d) the amendment introduced by the Protocol amending the Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data (Convention 108+, below).

2. The core of the work

Section 1 - Link between data protection works in the world and individual principles

There is an inextricable link between the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data - hereinafter referred to as Convention 108 and the current regulatory framework that exists in the European Union, in particular the General Data Protection Regulation (GDPR) - Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC - General Data Protection Regulation or GDPR published in the Official Journal L 119, 04.05.2016, provided in the preamble of the European Directive 1995 - Directive 95/46/EC of the European Parliament and of the Council dated 24 October 1995 on the protection of individuals in terms of processing the personal data of personal staff and the free circulation of this data, which is at the disadvantage of his ideas would be the principles of protecting the rights and freedoms of natural persons, including the right to private life, which are provided for in the Directive deb .. and elaborate on those contained in the Convention of the Council of Europe on automated processing on January 28, 1981, to protect individuals. The 2016 Regulation provides in the statements that the objectives and principles

of Directive 95/46/EC remain in force. The directive was followed by the GDPR which is in force in Romania, since 2018. (Şandru&Alexe, 2018)

This fact was also noted in the conclusions of Advocate General Niilo Jaashkinen presented on June 25, 2013, in the case C-131/12 Google Spain and Google, i.e., in the judgment of May 13, 2014, in addition to the negotiation and adoption of the 1995 directive, reasoning material of a much wider scope was given. This was done because operators wanted to adapt to technological developments related to data processing, which were more decentralized than files based on traditional centralized databases and included new types of personal data such as images or new processing techniques such as searches of text without indexing.

Section 2 - Data protection and the new technologies. Opinions.

The Council of Europe is concerned not only with data protection, but also with other elements arising from newly developed technologies e and which have a particular impact on private life in general a. Regarding social networks, the Council of Europe has adopted three acts of recommendation: Recommendation CM/Arg (2012) 4 of the Committee of Ministers on the protection of human rights in the context of social networks, Recommendation CM/Arg (2012) 3 to member states on the protection human rights in relation to the use of search engines and Recommendation CM/Rec (2008) 6 on measures to allowing respect for freedom of expression and information about internet filtering. The Parliamentary Assembly has adopted several resolutions indirectly related to data protection, such as Resolution 2045 on mass surveillance (2015), Resolution 2060 on improving the protection of whistleblowers (2015), Resolution 1986 on improving the safety and security of users in cyberspace (2014), Resolution 1843, on the protection of privacy and personal data on the Internet and online (2011), etc. In the field of artificial intelligence, the Council of Europe recently decided to create an ad hoc committee to examine potential risks, including the impact on privacy and personal data. In January 2019, Convention Committee 108 adopted some guidelines on artificial intelligence and data protection.

This scientific approach perfectly describes the regulatory framework developed by the Council of Europe and, at the same time, offers an exceptional way of reporting on international law by referring to two documents of a different legal nature to understand the pattern of data protection, namely Convention 108. and GDPR. (Shandru, 2018)

Convention 108 seeks to respect his fundamental rights and freedoms, and in particular the right to private life, including in relation to the automatic processing of personal data relating to him (data protection)” (Article 1). Unlike the European Union, data protection from the point of view of the Council of Europe is inseparable from privacy. This provision has not been changed since 2018. The Convention provides fewer definitions than the GDPR but emphasizes that it applies to both the public and private sectors, which dates from back to the 1980s when data protection was just beginning. The Convention requires states to establish effective

sanctions and remedies, but these may be state dependent. Only Council of Europe member states can be controlled, indirectly, by actions brought before the European Court of Human Rights if the sanctions and effective remedies are in accordance with Convention 108/108+ and the European Convention on Human Rights. The ECtHR also has the possibility to check whether the restrictions on citizens' rights comply with the provisions of the Charter, since these restrictions must be satisfactorily justified by the states. States may have more extensive legislation than the Convention, but only within the spirit and limits of its provisions.

Section 3 - The cooperation of the Council of Europe with the ECHR and with the Member States in terms of cross

Chapter III regulates cross-border data flows (i.e., the free movement of data as contained in the GDPR), which member states may not restrict. Chapter IV deals with the cooperation between the member states of the Convention and the relationship with the Council of Europe, and the next chapter establishes and organizes the Consultative Committee, and the last two chapters only regulating the procedure in which improvements may be proposed. as final clauses.

The convention was signed by Romania on March 18, 1997, and ratified by Law no. 682/2001, however, after its adoption or until now, neither the law nor the Convention has benefited from the publicity of the GDPR, which, beyond the principles and other provisions that establish a minimum protection, also regulates quite important sanctions. On the rolii.ro website there is only one reference to Convention 108, unlike hundreds of references to the GDPR, many references before the implementation of the Regulation, as it is true that Law No. 681/2001 was put into effect in 261 cases (some with visible errors, in the sense that the year of the law is wrong, which is actually Law no. 682/2002 on witness protection), and the majority of complaints about breaking rules, the provisions of the OG stated in law 2/2001, Law 677/2001, Law 682/2001, Law 102/2005, Law 544/2001 and GEO 195/2002, sometimes ECHR or Regulation no. .45/2001 of "European Order 52/18.04.2002). In one case, the court formally validated the legality of data processing by referring to a regulation that establishes the obligation to communicate the records, respectively by means of display. This issue. still exists today, while in some cases not only the legal establishment of the possibility of processing data means that it is valid by referring to the protection of the data of the person concerned or the data subject, as the regulated by the Charter of Fundamental Rights of the European Union (CFEU) and ECHR In this case, by a final decision (irrevocable in 2011, at the time of the judgment), the Court of Appeal of Bucharest reasoned that one of the reasons for exemption from communication of personal data is also one of the reasons Convention 108 .

Section 4 - Romanian legislation and the problems arising in its application

The art. 12 paragraph 1 letter d) of Law no. 544/2001, the law from which the plaintiff requested the information, specifically states that "it is exempted from the free access of citizens, which is provided for in art. 1 and respectively to art. 11 1: d) information about personal data, under the law".

Law no. 677/2001 regarding the protection of individuals in terms of p personal data transfer and the free circulation of these data provided in art. 8 paragraph 1 that other personal data can be published with an identification function that is generally applicable only: a) if the data subject has given his consent specifically or b) is specifically provided for the processing by a legal provision.

Law no. 677/2001 is also a translation of Council Directive no. 95/46/CE of the European Parliament and the European Council on 24 October 1995 on the protection of individuals regarding the processing of personal data.

Also, according to Law no. 682/2001, Romania ratified the Convention on the protection of individuals against automatic processing of personal data, adopted by Strasbourg on 28.01.1981.

All these normative acts are exempted from the communication of personal data, respectively data relating to identified persons or identifiable persons.

The aim of the Court of Bucharest, in several decisions, is to communicate information of public interest in accordance with Law no. 544/2001 and to justify rejecting the request because the response to the request relates to the communication of personal data, it puts the national and European regulatory framework into context: "Given that Romania is participating in the European legal system. Europe and the European Union, the national courts are required to interpret and apply the laws number 544/2001 and number 677/2001 in accordance with the international legislation which became part of the domestic law through confirmation, according to art 11 paragraph (2) of the Constitution, and with the legislation of the European Union, which is relevant in this case: the Convention on the protection of human rights and fundamental freedoms, confirmed by Law number 30/1994, in particular article 8 of the Convention the Convention. Council of Europe for the protection of individuals with regard to automatic processing of personal data, adopted in Strasbourg on January 28, 1981, ratified by Romania through Law no. 682/2001; Directive 95/46/CE of the European Parliament and Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data; The Charter of Fundamental Rights of the European Union, which became mandatory with the entry into force of the Treaty of Lisbon on 1 December 2009 (Article 6, paragraph (1) of the Treaty on European Union)". Returning to Law No. 682/2001, must to this mention the declarations made by the Romanian state, in accordance with the provisions of the Convention and which refer to the scope (the Convention does not apply to the processing of personal data that is part of a record) ■ system, when: a) they are carried out; carried out within the framework of activities in the field of national

defense and national security, which are carried out within the limits and with the restrictions established by law; b) the data processing concerns obtained from documents; accessible to the public, in accordance with the law; c) are maintained; by natural persons for their personal use only, if the data in question is not intended for disclosure), competence the Associations and the Convention. Nations, as well as the designation of the independent authority, feel protection authority - Processing personal data, now (at the time of its confirmation this was the People's Advocate organization). (Alex, 2018)

Section 5 - Convention 108 and the Council of Europe Convention

The Convention for the Protection of Individuals regarding Automatic Processing of Personal Data was adopted in Strasbourg on January 28, 1981. Prior to this event, some states began to have their own data protection legislation as early as the 1970s and 1980s. for Economic Cooperation and Development and in the period with the adoption of Convention 108, the Institute's Guidelines were adopted and published.

Convention 108 formed the European framework until 1994, when Directive 95/46 was adopted, but remained in force until amended by Convention 108+ and is still in force. From 1995 until today, Convention 108 (respectively 108+) and Directive 46 (respectively GDPR) are European standards in relation to international law. The Council of Europe had its own group of experts, which worked for several years until the Convention was adopted on 17 September 1980, a desk opened for signature on 28 January 1981. Following these international documents, national laws on personal data protection have been adopted. develop. and the circulation of this data. The convention was signed and ratified by the member states of the Council of Europe, as well as by the non-member states (Uruguay, Tunisia, Argentina, etc.). In 1990, United Nations Resolution n no. 45/95 of the United Nations General Assembly on December 14, 1990, regarding the regulation of computer files of personal data, an international document used as a neutral standard in international relations. The report on Convention 108 stated that the United Nations should adopt Convention 108 as a general data protection document. The Council of Europe Convention was very successful, as its first international instrument adopted by an international organization has closed l effect in the European Union and in non-European states and was ratified by countries outside Europe or by the Council of Europe. In addition to the states that have adopted the convention, there are several important and geographically diverse countries that have observer status, with beneficial effects in extending the principles around the world. (Greenleaf, 2013).

Convention 108 offers many advantages to the world, including: realistic conditions for global adoption (given adoption by several non-European states and the observer status of other states), as there are no serious alternatives (the OECD guidelines have not had the same penetration). force), imposes voluntary obligations, which can be adopted by one system or another, and which are already recognized as "good practices", moderate standards, minimum standards, benefits to the business environment, benefits to natural persons of the minimum

protection, such as Professor Graham Greenleaf noted, that is, immediately after the acceptance of Uruguay, many other states, up to 80, could agree to Convention 108. We can add, in the system of the General Regulation on Protection Data, access to the Council of Europe Convention would and could be the basis. for announcing the European Commission's decision to implement Article 45 on transfers based on an adequacy decision. Therefore, in accordance with one of the conditions, in order to assess the adequacy of the level of protection, the European Commission is required to examine other international commitments assumed by the third country or the international organization in question from a legal point of view, such as y as well as its participation in multilateral or regional systems, especially in the field of personal data protection, including acceptance or compliance with the Council of Europe Convention. This is noted and considered. (105) of the preamble of the said GDPR that the third country's accession to the Council of Europe Convention on 28 January 1981 for automatic processing of personal data and the Additional Protocol to it, which shows that the approach of countries that have ratified Convention 108 will have to be reviewed later, as it is relevant to the extent that it is not contrary to the GDPR.

The processing of personal data has received particular attention in recent years with the entry into force of the General Data Protection Regulation. As noted, a few years ago, data protection is being rethought in the European Union. This reform process in the European Union includes several elements, each resulting from the entry into force of the Treaty of Lisbon, in particular the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union. On the other hand, the orientation decisions of the Court of Justice of the European Union influenced the development of the fundamental right to protect personal data, the most well-known being the right to erasure. The cases relating to digital rights are particularly important because they draw attention to the difference between Council of Europe regulations and European Union regulations. While in the framework of the European Convention on Human Rights the right to data protection is directly protected for the citizens of the signatory states by art. 8 which protects private life, within the European Union, the EU Charter of Fundamental Rights protects the right to private life separately (art. 7) from the right to data protection (art. 8).

Section 6 - Rethought the GDPR

We will now analyze the references to Convention 108 in the Opinion of the Advocates General before the Court of Justice. The opinion of the Advocate General before the Court of Justice is an independent opinion which indicates the direction the Court intends to take in a particular case.

In her conclusions presented on 15 October 2009 in case C-28/08 P, Advocate General Eleanor Sharpston stated that, in order to complement the provisions of Article 8 of the ECHR, "the Council of Europe adopted an automatic process of personal data processing (hereafter "Convention No. 108"), cited by the Commission in its action, said that it had influenced the

Community according to this convention, and in accordance with which it was admitted that it was desirable to extend the protection of the fundamental rights and freedoms of persons natural, specifically the right to privacy when automation comes into play.

An idea. 99 of the Conclusions state that although the fundamental right to privacy is a traditional right, recognized by national constitutions and all human rights declarations, its extension to data protection is only possible with technological developments and the generalization of the use of computers personal has occurred; and in this sense, Convention no. 108 contributed to the protection of this part of private life by penetrating the community legal order through the constitutional traditions common to all member states.

In his conclusions presented on 25 June 2015 in case C-230/14, Advocate General Pedro Cruz Villalon argued that the competence of a supervisory authority is not affected h Convention 108. So an action following a complaint, or an individual request referred to him. he must be able to use his own investigative powers in his territory. This is clear from Article 28(4) of the Directive, which requires supervisory authorities to receive complaints from any person who has a request to protect their rights and freedoms in relation to the processing of personal data. At the same time, this evaluation is in accordance with the provisions of Convention 108 of the Council of Europe on January 28, 1981, for the protection of automatic processing of personal data, which provides in article 14, if a person resides in the Contracting party territory otherwise, he will have the possibility to present his request also through the authority specifically designated by that party.

In other conclusions published on 3 July 2012, in case C-614/10, Advocate General Jan Mazak stated that, in accordance with the Commission's opinion, it was based on the phrase "in full independence", a fact confirmed by the purpose of Article 28 para (1) of Directive 95/46, which aims at effective and reliable management of the data protection provisions, as well as the way in which the tasks of the AEPD are planned in Regulation no. . 45/2001, which provides for the greatest independence of the AEPD from an organic and material point of view. In addition, the Commission draws attention to point 17 of the explanatory report of the Additional Protocol to the Convention on the Protection of Individuals regarding the automatic processing of supervisors' personal data and cross-border data flows, which lists the elements that contribute to that. to guarantee the independence of the supervisory authority, including the constitution of this authority, the way in which its members are appointed, the duration of the mandate and the conditions for terminating the powers, providing sufficient resources to that authority or its members. adoption. decisions, excluding any external orders or instructions. (Greenleaf, 2012). In her Opinion delivered on 17 June 2010, Advocate General Eleanor Sharpston, relating to cases C-92/09 and C-93/09, referred to the relationship between the right to private life and the right to protect personal data , showing that they are rights from different generations, namely that two specific rights are considered here, that is, a classic right such as the respect for private life provided for in Article 8 of the ECHR and a more modern right, represented by the provisions of the Data Protection Convention. No. 108. Other similar rights are set out in

specific terms in the Charter in Article 7 and Article 8 of the Charter respectively. The Court recognized that there is a close connection between the fundamental right to privacy and the right to protect personal data (paragraph 71). The Strasbourg Court has already ruled that a legal person and a natural person can invoke Article 8 of the ECHR and that the protection provided by this Article can be extended to professional and commercial activities. Therefore, the right to private life and the right to data protection are *prima facie* relevant to the two applicants in the national case which starts from the exact content of these rights, as it is absurd to claim that a legal person can bring Article 8 of the ECHR into force, but not. Convention no. 108.

In his conclusions published on 8 May 2008 in case C-73/07, Advocate General Juliane Kokott stated that the Council of Europe Convention for the Protection of Persons with Disabilities does not refer to the automatic processing of personal data that does not have any personal data. 108, it does not regulate a special privilege for the mass media, but the adoption of certain rules, which are nothing more than derogations to protect the rights of others, as it appears from the explanations linked to article 9 (b) of the Convention, Explanatory Report, para. 58, <http://conventions.coe.int/Treaty/EN/Reports/Html/108.htm>".

Not only do Advocates General simply refer to Convention 108, but they also use it to build comparative arguments or to demonstrate the international normative framework, giving the courts the necessary interpretation. Convention 108 is a milestone in the law of the European Union and if it were not of exclusive competence, derived from art. 16 TFEU, the application and interpretation of the Council of Europe Convention would constitute at least one of the common constitutional principles of the member states.

The amendment of Convention 108 was necessary to promote the rights of all as well as to promote an effective legal standard. The Convention was amended in 2010 and there was a second amendment in 2018, namely the Protocol amending the Council of Europe Convention on the Protection of Individuals in relation to Automatic Processing of Personal Data. Work on the reform committee began in 2011, and the text was finally finalized and opened for signature on October 10, 2018.

From a structural point of view, the Convention has not been modified, except for the addition of an appendix on the procedure for the organization and operation of the Convention Committee.

Section 7 - The novelties of the 108+ Convention

The novelties of Convention 108+ are mainly as follows:

- Significantly increase the level of data protection of the providers for it in Convention 108.
- provides the principle of legal processing by detailing the meaning of the consent of the person concerned.
- strengthen the protection of special personal data by expanding at the same time the categories of data to those recognized by Union law as special categories of personal data.

- establishing additional guarantees for natural persons when processing their personal data, the obligations to examine the likely impact of a proposed data processing operation and to implement relevant measures from a technical and organizational point of view, as well as the obligation to report serious crimes, of data security data or passenger name register.

The details of the adoption of the Amendment Protocol have been published and it should be noted that the European Union played an important, essential role in deciding the moment this international document is adopted and signed. (Green leaves, 2013)

The literature emphasizes that the role of non-governmental organizations (NGOs) is increasing and suggests that NGOs also participate in working groups, as they may have different approaches and may even represent interests that they do not consider when considering a situation, the organization. another state by asking to be invited to become a party to the convention and, in addition, it would increase the transparency of the working groups' analyses.

Therefore, the rights of data subjects are strengthened, especially in terms of transparency and access to data.

The right not to be subject to a decision that significantly affects the data subject, which is based entirely on automatic processing, the data subject's right to object to data processing, the data subject's right to appeal in case of rights will be violated is naturally presented as such. person.

States parties are therefore required to establish independent authorities to oversee the protection of personal data.

Under these conditions, it can be stated that the European Union and other international organizations will be able to agree to the Convention; the important role of the EU can be seen in the drafting of art. 26 of the consolidated version that any amendment proposal will be sent to all interested parties, namely the member states, countries in the acceptance process, etc., including the European Union. (Alex et al., 2017)

3. Conclusion

To promote and encourage the adoption of Convention 108+, but also to determine its implementation, the EU adopted Decision (EU) 2019/682 which highlights three important aspects. The Commission's decision refers, in its introduction, to the intervention of Convention 108+ in the GDPR and Directive 2016/680 (2), to the promotion of European standards in general and to the fact that it is impossible for the European Union to sign the Convention and considering the exclusive competence of the Union in this field, to authorize the member states to confirm in the interest of the European Union the modification of the Convention. In accordance with the provisions of Decision (EU) 2019/682, which certify that, insofar as they apply to the processing of personal data in the context of activities falling within the scope of Union law, the provisions of a revised Convention 108 affect common rules or apply them in the sense of article 3 para. of the treaty, as those provisions are based on the same

principles as those established in Regulation (EU) 2016/679 and Directive (EU) 2016/680 of the European Union. Parliament and the Council. Therefore, it underlines that the entry into force of the Convention in a new form adapts to the Union's global promotion of data protection standards, facilitating the flow of data between the Union and parties to the Convention 108 outside the Union and ensure the international obligations of Member States. under Convention 108 and allow the Union to be fully accepted in the future to Convention 108. Through Convention 108, the GDPR has international compliance with the GDPR, as an active, mandatory, procedural element in business relations with member- the states of the European Union. The need to adopt an international document with a global character or with the participation of as many states as possible was also highlighted by studying the data protection situation in humanitarian law where there are several international soft law documents and where there is Convention 108+, by nature generally, provides a basis for data processing in this context. Convention no. 108 is included among the legal bases of the draft agreement between Canada and the European Union on the transfer and processing of Passenger Name Record data.

The details of the adoption of the Amendment Protocol have been published and it should be noted that the European Union played a major role in determining the timing of the adoption and signing of this international document. (Greenleaf, 2013)

The literature emphasizes that the role of non-governmental organizations (NGOs) is increasing and suggests that NGOs also participate in working groups, as they may have different approaches and may even represent interests that they do not consider when considering someone else's girlfriend. state. a request to be invited to become a party to the convention and, in addition, it would increase the transparency of the working groups' analyses.

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