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## **INTERNATIONAL LEGISLATION AND PRINCIPLES IN THE FIELD OF PROTECTION OF BIOMETRIC PERSONAL DATA**

The article is devoted to the study of international legislation in the field of protection of biometric personal data. The article describes the basic principles in the field of protection of biometric personal data. The article contains provisions of international norms in the field of protection of biometric personal data. The article highlights the shortcomings of non-compliance of Ukrainian regulations with international standards in the field of protection of biometric personal data. This scientific article identifies the principles that are binding on each Member State in the context of bringing legislation in the field of personal data protection in line with international law, in particular such as the principle of automation of personal data processing by automated systems; the principle of respect for fundamental rights and human freedoms regardless of the location of the databases; the principle of the link between the protection of personal data and the right to privacy; the principle of equality in the protection of personal data in any city; the principle of territorial independence; the principle of subsidiarity; the principle of approximation of legislation in the field of personal data protection; the principle of equal protection of personal data for automated databases, their equal maintenance; the principle of collecting and processing personal data in a clearly defined manner; the principle of granting or obtaining permission for the use of personal data in case of protection of vital interests of the subject; the principle of permission for the use of personal data in case of justification of their processing for public purposes in health, social protection, science and public statistical research; the principle of the possibility for Member States to establish specialization in the field of obtaining individual information in their legislation and others.

**Keywords:** biometric personal data, personal data, principles in the field of biometric personal data protection, international legislation in the field of biometric personal data protection, implementation of norms in the field of biometric personal data protection.

**Formulation of the problem.** Today, the European Court of Human Rights is increasingly dealing with cases in the field of protection of biometric personal data, while Ukrainian courts hardly consider such cases, because people rarely go to court for the protection of biometric personal data. In our opinion, this is a very negative characteristic of the level of protection of biometric personal data in the country.

After all, at the legislative level, a person can apply for the protection of biometric personal data only to a court or to the Verkhovna Rada of Ukraine Commissioner for Human Rights.

Thus, the study of the need to bring Ukrainian legislation into line with international standards for the protection of biometric personal data is useful given Ukraine's proposal to implement effective international standards in the field of protection of biometric personal data in Ukrainian legislation.

**Analysis of the state of the study.** The issue of studying the experience of the European Court of Human Rights in the context of cases in the field of protection of biometric personal data was engaged in the implementation of scientific activities by such scholars in the field of law as: Aristova I., Zayarny O., Kravchuk M., Pazyuk A., Popov A., Melnyk A., Rizak M. and other scholars in the field of law.

**Presenting main material.** In Ukraine, a person can apply for protection of his / her biometric personal data only to a few instances, in particular to the court and to the Verkhovna Rada Commissioner for Human Rights.

Examining the question of how often individuals in Ukraine apply for the protection of their biometric personal data, we can answer that very rarely. And not because their biometric personal data is not violated, but because they do not know how they can protect their rights.

It is extremely difficult to prove in court a violation of the right to protection of biometric personal data in case of ignorance. Examining the question of how effectively judges of general courts resolve such disputes, we cannot state that such a practice is effective in Ukraine.

It is extremely rare for courts to satisfy claims in the context of a violation of the right to protection of biometric personal data.

Therefore, based on the above study of the case law of the European Court of Human Rights in the context of resolving disputes in the field of biometric personal data, it will be effective for practitioners, judges and those who directly intend to seek protection of biometric personal data in court.

Legislation in European countries in the context of personal data protection began to take shape and improve before similar norms began to appear in Ukraine, in particular in the 1980s. After all, in 1983 the Federal Constitutional Court of the Federal Republic of Germany gave grounds for the need to create regulations in the field of biometric data protection, because the user has the right to know information about himself and how his personal data is used and so on.

Similarly, the Federal Republic of Germany adopted the Data Protection Act in 1990, although it was not the first European country to adopt such a law to regulate the protection of biometric personal data<sup>1</sup>.

France passed the Informatics, File and Freedom Act in 1978, then Finland passed the Citizens Registration Act in 1987, then the United Kingdom passed the Personal Data Protection Act in 1984.

Hungary later passed the Law on the Protection of Personal Information and Access to Information of Public Interest in 1992, and the Netherlands subsequently adopted a kind of Vulnerable Data Decree in 1993<sup>2</sup>.

In 1995, Hong Kong, as an Asian country, passed the relevant law, and accordingly, the laws "On the practice of identity card numbers" and "On data on consumer creditworthiness" were adopted<sup>3</sup>.

The Convention 108 on the Protection of Individuals with regard to Automatic Processing of Personal Data, adopted by the Council of Europe on 28 January 1981, expresses concern about the protection of biometric personal data 40 years ago by the European Community, which at that time personal data<sup>4</sup>.

The convention aims to unite the countries of the world to create uniform rules for the transfer of individual electronic information about a person – mandatory for the processing of personal data.

Many countries have acceded to the above-mentioned Convention since its adoption, almost all the countries we have listed before have acceded at once, and twenty years after its adoption the number of acceding countries has reached twenty.

Literally, the aim of the Convention is to achieve greater unity between its members, in particular through respect for the rule of law and human rights and fundamental freedoms, given the expediency of extending guarantees of the rights and fundamental freedoms of everyone, and in particular the right to respect for private life<sup>5</sup>.

Subsequently, the European Parliament adopted Directive 97/66 / EC on the processing of personal data and the protection of the right to privacy in the telecommunications sector of 15 December 1997<sup>6</sup>.

It was not the only international document that regulated the protection of biometric personal data at the international level, in particular such documents as Directive 2002/20 / EC of the European Parliament and of the Council of 7 March 2002 on the authorization of electronic communications networks and services. (Authorization Directive), Directive 2002/22 / EC of the European Parliament and of the Council

<sup>1</sup> Шемшученко, Ю. С., Чиж, І. С. (ред.). (2005). *Інформаційне законодавство: Збірник законодавчих актів у 6 томах*. Київ: Юридична думка, 5.

<sup>2</sup> Попов, А. О. (2009). Зарубіжний досвід правового регулювання захисту відомчих інформаційних ресурсів. *Форум права*, 3, 513-519.

<sup>3</sup> Шемшученко, Ю. С., Чиж, І. С. (ред.). (2005). *Інформаційне законодавство: Збірник законодавчих актів у 6 томах*. Київ: Юридична думка, 5.

<sup>4</sup> Конвенція про захист осіб у зв'язку з автоматизованою обробкою персональних даних, 1981 (Рада Європи). Офіційний сайт Верховної Ради України <[http://zakon4.rada.gov.ua/laws/show/994\\_326](http://zakon4.rada.gov.ua/laws/show/994_326)>. (2021, January, 19).

<sup>5</sup> Там само.

<sup>6</sup> Директива 97/66/ЄС «Стосовно обробки персональних даних і захисту права на невтручання в особисте життя в телекомунікаційному секторі», 1997 (Європейський Парламент і Рада Європи). Офіційний сайт Верховної Ради України <[http://zakon.rada.gov.ua/laws/show/994\\_243](http://zakon.rada.gov.ua/laws/show/994_243)>. (2021, January, 19); Директива № 2002/58/ЄС Європейського Парламенту і Ради ЄС стосовно обробки персональних даних та захисту права на недоторканість особистого життя в сфері електронних комунікацій (Директива про право на недоторканість особистого життя та електронні засоби зв'язку), 2002 (Європейський Парламент і Рада Європи). Офіційний сайт Верховної Ради України <[http://zakon2.rada.gov.ua/rada/show/994\\_b34](http://zakon2.rada.gov.ua/rada/show/994_b34)>. (2021, January, 19).

of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) and Directive 2009/136 / EC of the European Parliament and of the Council Parliament and of the Council of 25 November 2009<sup>1</sup>.

In the context of the protection of biometric personal data, the norm of the UN Universal Declaration of Human Rights of 10 December 1948, enshrined in Article 12, is of paramount importance: in his honor and dignity. Everyone has the right to the protection of the law against such interference or attacks"<sup>2</sup>.

As for Ukraine, it should be noted that territorial affiliation with Europe did not affect the adoption of the previous legislative act that would regulate the protection of biometric personal data, so the adoption of the relevant law – the Law of Ukraine "On Personal Data Protection" took place in 2010<sup>3</sup>.

The case law of the European Court of Human Rights in the field of biometric data protection is based on European principles of personal data protection, in particular such as:

–the principle of automation of personal data processing through automated systems, in accordance with Convention 108;

–the principle of the need to respect fundamental human rights and freedoms regardless of the location of databases, as territorial restrictions are unacceptable in the field of personal data protection, in accordance with the basic provisions of the UN Universal Declaration of Human Rights of 10 December 1948;

–the principle of connection between the protection of personal data and the right to privacy;

–the principle of equality of all regarding the protection of personal data in any city;

–the principle of territorial independence, as States Parties to the Convention guarantee adequate protection of individual information, all future Member States wishing to accede to this Convention must guarantee the fulfillment of the basic requirements set out therein;

–the principle of subsidiarity, which accordingly provides for any processing of individual information about an individual. This processing should accordingly take place on the basis of the law of the Member State, the powers of the controller created by it, and accordingly the level of possible risks of loss or leakage of information are based on national legal bases;

–the principle of approximation of legislation in the field of personal data protection;

–principles of equal protection of personal data for automated databases, their same maintenance;

–the principle of collection and processing of personal data in a clearly defined manner;

–the principle of granting or obtaining permission to use personal data in case of protection of vital interests for the subject;

–the principle of permission for the use of personal data in case of justification of their processing for public purposes in the field of health care, social protection, in the scientific sphere and in state statistical research;

–the principle of the possibility for Member States to establish in their legislation specialization in areas for obtaining individual information, etc.

The principles set out above are binding on each Member State in the context of bringing personal data protection legislation into line with Convention 108<sup>4</sup>.

The case law of the European Court of Human Rights is based on the above-mentioned international principles. For Ukraine, compliance with these requirements is one of the prerequisites for European integration.

For European countries, improper handling of personal data is classified as an administrative offense, and in Ukraine, in particular, is punishable by significant fines (from two hundred to three hundred non-taxable minimums).

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<sup>1</sup> Кравчук, М. М. (2013). Міжнародний досвід правового регулювання захисту персональних даних у мережі інтернет. *Національна бібліотека України імені В. І. Вернадського* <[http://www.irbis-nbuv.gov.ua/cgi-bin/irbis\\_nbuv/cgiirbis\\_64.exe?I21DBN=LINK&P21DBN=UJRN&Z21ID=&S21REF=10&S21CNR=20&S21STN=1&S21FMT=ASP\\_meta&C21COM=S&2\\_S21P03=FILE=&2\\_S21STR=Nzizvru\\_2013\\_3\\_24](http://www.irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?I21DBN=LINK&P21DBN=UJRN&Z21ID=&S21REF=10&S21CNR=20&S21STN=1&S21FMT=ASP_meta&C21COM=S&2_S21P03=FILE=&2_S21STR=Nzizvru_2013_3_24)>. (2021, January, 19).

<sup>2</sup> *Загальна Декларація прав людини, 1948* (ООН). *Офіційний сайт Верховної Ради України* <[http://zakon2.rada.gov.ua/laws/show/995\\_015?test=XX7MfyrCSgkyS5FIZiTwXTZNHdlyUsFggkRbI1c](http://zakon2.rada.gov.ua/laws/show/995_015?test=XX7MfyrCSgkyS5FIZiTwXTZNHdlyUsFggkRbI1c)>. (2021, January, 19).

<sup>3</sup> *Закон України про захист персональних даних, 2010* (Верховна Рада України). *Офіційний сайт Верховної Ради України* <<http://zakon4.rada.gov.ua/laws/show/2297-17/page>>. (2021, January, 19).

<sup>4</sup> *Конвенція про захист осіб у зв'язку з автоматизованою обробкою персональних даних, 1981* (Рада Європи). *Офіційний сайт Верховної Ради України* <[http://zakon4.rada.gov.ua/laws/show/994\\_326](http://zakon4.rada.gov.ua/laws/show/994_326)>. (2021, January, 19).

In general, the International Guiding Principles on the Protection of the Right to Privacy were developed in 1969 and adopted by a group of experts from the Organization for Economic Co-operation and Development chaired by a representative of the Australian Legal Reform Committee. Relevant principles were essentially formed on the basis of the practice of personal data protection of foreign countries. The above principles were adopted in 1980, and to date no commitments have been made to Member States in connection with the adoption of the principles<sup>1</sup>.

It is important to emphasize that the provisions of the Convention and the work of the Organization for Economic Cooperation and Development have prompted the harmonization of national legislation of member countries in accordance with international standards for personal data protection in general, and biometric personal data in particular.

Appropriate standardization of consumer protection for the protection and processing of personal data not only on the Internet, but in general in all network systems has become one of the main guidelines in the field of national regulation of personal data protection.

Therefore, it should be concluded that the principles discussed in this scientific article are binding on each of the Member States in the context of bringing the legislation in the field of personal data protection in line with international law. In particular, the principle of automation of personal data processing through automated systems, the principle of respect for fundamental human rights and freedoms regardless of the location of databases, the principle of connection between personal data protection and the right to privacy; the principle of equality of all regarding the protection of personal data in any city; the principle of territorial independence, the principle of subsidiarity, the principle of approximation of legislation in the field of personal data protection; the principle of equal protection of personal data for automated databases, their same maintenance; the principle of collecting and processing personal data in a clearly defined manner; the principle of granting or obtaining permission to use personal data in case of protection of vital interests for the subject; the principle of permission for the use of personal data in case of justification of their processing for public purposes in the field of health care, social protection, in the scientific sphere and in state statistical research; the principle of the possibility for Member States to establish in their legislation specialization in areas for obtaining individual information, etc.

**Conclusions.** In the context of studying international legislation in the field of biometric personal data protection, it should be concluded that Ukraine needs to harmonize regulations with the provisions of the UN Universal Declaration of Human Rights, Directive 2002/20 / EC, Directive 2009/136 / EU, Directive 97/66 / EC on processing of personal data and protection of privacy in the telecommunications sector and Convention 108 on the Protection of Individuals with regard to Personal Data with Automated Processing of Personal Data.

## References:

1. *Dyrektyva 97/66/YES Stosovno obrobky personalnykh danykh i zakhystu prava na nevtruchannya v osobyste zhyttya v telekomunikatsynomu sektori, 1997* (Yevropeyskyy Parlament i Rada Yevropy) [Directive 97/66 / EC on the processing of personal data and the protection of the right to privacy in the telecommunications sector, 1997 (European Parliament and Council of Europe)]. *Ofitsiyyny sayt Verkhovnoyi Rady Ukrayiny* [Official site of the Verkhovna Rada of Ukraine] <[http://zakon.rada.gov.ua/laws/show/994\\_243](http://zakon.rada.gov.ua/laws/show/994_243)> (2021, January, 19). [in Ukrainian].
2. *Dyrektyva № 2002/58/YES Yevropeyskoho Parlamentu i Rady YES stosovno obrobky personalnykh danykh ta zakhystu prava na nedotorkanist osobystoho zhyttya v sferi elektronnykh komunikatsiy (Dyrektyva pro pravo na nedotorkanist osobystoho zhyttya ta elektronni zasoby zvyazku), 2002* (Yevropeyskyy Parlament i Rada Yevropy) [Directive № 2002/58 / EC of the European Parliament and of the Council on the processing of personal data and the protection of privacy in the electronic communications sector (Directive on the right to privacy and electronic means of communication), 2002 (European Parliament and Council of Europe)]. *Ofitsiyyny sayt Verkhovnoyi Rady Ukrayiny* [Official site of the Verkhovna Rada of Ukraine] <[http://zakon2.rada.gov.ua/rada/show/994\\_b34](http://zakon2.rada.gov.ua/rada/show/994_b34)>. (2021, January, 19). [in Ukrainian].
3. *Zahalna Deklaratsiya prav lyudyny, 1948* (OON) [Universal Declaration of Human Rights, 1948 (UN)]. *Ofitsiyyny sayt Verkhovnoyi Rady Ukrayiny* [Official site of the Verkhovna Rada of Ukraine] <[http://zakon2.rada.gov.ua/laws/show/995\\_015?test=XX7MfyrCSgkyS5FIZiTWTZNHdlyUsFggkRb11c](http://zakon2.rada.gov.ua/laws/show/995_015?test=XX7MfyrCSgkyS5FIZiTWTZNHdlyUsFggkRb11c)>. (2021, January, 19). [in Ukrainian].

<sup>1</sup> Пазюк, А. В. (2000). *Захист прав людини стосовно обробки персональних даних: міжнародні стандарти*. Київ: Інтертехнодрок <<https://docs.google.com/document/d/1hvVJPeoCVqBAauBZWjopyn58h1VbBehAucIDV0uYEU/edit?hl=ru&pli=1>> (2021, January, 19).

4. *Zakon Ukrainy pro zakhyst personalnykh danykh, 2010* (Verkhovna Rada Ukrainy) [Law of Ukraine on Personal Data Protection, 2010 (Verkhovna Rada of Ukraine)]. *Ofitsiynyy sayt Verkhovnoyi Rady Ukrainy* [Official site of the Verkhovna Rada of Ukraine] <<http://zakon4.rada.gov.ua/laws/show/2297-17/page>>. (2021, January, 19). [in Ukrainian].
5. *Konventsiya pro zakhyst osib u zvyazku z avtomatyzovanoyu obrobkoyu personalnykh danykh, 1981* (Rada Yevropy) [Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 1981 (Council of Europe)]. *Ofitsiynyy sayt Verkhovnoyi Rady Ukrainy* [Official site of the Verkhovna Rada of Ukraine] <[http://zakon4.rada.gov.ua/laws/show/994\\_326](http://zakon4.rada.gov.ua/laws/show/994_326)>. (2021, January, 19). [in Ukrainian].
6. *Konventsiya pro zakhyst osib u zvyazku z avtomatyzovanoyu obrobkoyu personalnykh danykh, 1981* (Rada Yevropy) [Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 1981 (Council of Europe)]. *Ofitsiynyy sayt Verkhovnoyi Rady Ukrainy* [Official site of the Verkhovna Rada of Ukraine] <[http://zakon4.rada.gov.ua/laws/show/994\\_326](http://zakon4.rada.gov.ua/laws/show/994_326)>. (2021, January, 19). [in Ukrainian].
7. Kravchuk, M. M. (2013). Mizhnarodnyy dosvid pravovoho rehulyuvannya zakhystu personalnykh danykh u merezhi internet [International experience in the legal regulation of personal data protection on the Internet]. *Natsionalna biblioteka Ukrainy imeni V. I. Vernadskoho* [V. I. Vernadsky's National Library of Ukraine] <[http://www.irbis-nbuv.gov.ua/cgi-bin/irbis\\_nbuv/cgiirbis\\_64.exe?I21DBN=LINK&P21DBN=UJRN&Z21ID=&S21REF=10&S21CNR=20&S21STN=1&S21FMT=ASP\\_meta&C21COM=S&2\\_S21P03=FILE=&2\\_S21STR=Nzizvru\\_2013\\_3\\_24](http://www.irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?I21DBN=LINK&P21DBN=UJRN&Z21ID=&S21REF=10&S21CNR=20&S21STN=1&S21FMT=ASP_meta&C21COM=S&2_S21P03=FILE=&2_S21STR=Nzizvru_2013_3_24)>. (2021, January, 19). [in Ukrainian].
8. Pazyuk, A. V. (2000). *Zakhyst prav lyudyny stosovno obrobky personalnykh danykh: mizhnarodni standarty* [Protection of human rights regarding the processing of personal data: international standards]. Kyiv: Intertekhnodruk <<https://docs.google.com/document/d/1hvVJPeoCVqBAauBZWjopyn58h1VbBehAucIDV0uYEU/edit?hl=ru&pli=1>> (2021, January, 19). [in Ukrainian].
9. Popov, A. O. (2009). Zarubizhnyy dosvid pravovoho rehulyuvannya zakhystu vidomchykh informatsiynykh resursiv [Foreign experience of legal regulation of protection of departmental information resources]. *Forum prava* [Law Forum], 3, 513-519. [in Ukrainian].
10. Shemshuchenko, Yu. S., Chyzh, I. S. (ed.). (2005). *Informatsiyne zakonodavstvo: Zbirnyk zakonodavchykh aktiv u 6 tomakh* [Information legislation: Collection of legislative acts in 6 volumes]. Kyiv: Yurydychna dumka, 5. [in Ukrainian].