Personal data protection as an element of the right to privacy

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***Abstract*— Privacy is one of the most important values for any human being, and the right to privacy is particularly strongly linked to the protection of human dignity. Throughout the history of the world, people have always shown an interest in the affairs of others. In the modern world, in an era of widespread technological advances that allow the collection, gathering and retrieval of information about others, the need for legal protection of the human right to privacy is increasing. In this regard, it is necessary to delineate and guarantee the spheres of personal life belonging to each person, in which no unauthorized person shall interfere. Every human being has the right to dispose of himself or herself, the right to undisturbed development of his or her own physical and psychological identity, and thus to live his or her own life, shaped according to his or her own will and independent to a certain extent from external influences.**

Keywords— privacy law, personal data, RODO.

I. INTRODUCTION

Treating man as an autonomous subject, who alone as an individual completely sovereignly decides about himself and his actions, if they do not encroach on the sphere of freedom of others, is the basis of the liberal conception of freedom. This view of individual freedom seems to have underpinned the separation and understanding of the right to privacy. In the early period of the development of the protection of the sphere of human life, which is now referred to as privacy, the institutions of protection of home mirrors and secrecy of correspondence came to the fore. However, the rationale for the protection of domestic mirrors, as well as correspondence, was derived from the right to property (Kański, 1991). A consequence of the inviolability of the dwelling was also the protection of private life (going on in the home) understood as the opposite of life exposed to the public, which was limited by many norms, including those of a non-legal nature. The category of privacy is one of the more puzzling and dynamically developing issues in modern social and legal sciences.

An essential ingredient of a democratic state is the prohibition of state action beyond what is necessary, which on the grounds of personal data protection can be interpreted as citizen participation in personal data protection decision-making. Uncontrolled processing of personal data, when the citizen does not know who is processing his personal data and for what purpose, raises the danger of restricting full freedom of decision-making or resolving one's own options. I. Lipowicz, while not denying the possibility of national and international data banks and information systems of a police or medical nature, states that "if the scope of similar information systems becomes too wide for the convenience of the administration (surveillance "just in case" of wider social groups, unified "information account" of the citizen remaining in the integration of hundreds of administrative data from different fields) or the detail of the data leads to the creation of "personal profiles" (simplified IT characterization of the individual), or finally there is a covert or overt marking of citizens with identification numbers that are not ordinal but meaningful, we are dealing with a case beyond what is necessary in a democratic state of law" (Boć, 1998).

The proposal adopted by the Nordic Conference of Jurists in 1967 defining the right to privacy as the right to be left alone, with a minimum of interference by others in one's personal life can be considered a broad approach (Robertson, 1983). A. Kopff defined it as the right of an individual to live his own life

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arranged according to his own will, with all outside interference limited to the minimum necessary (Kopff, 1972). According to L. Tribe, the right to privacy has been defined as freedom from unwanted stimulation, protection from intrusive observation and autonomy in deciding on most life choices (Tribe, 1979). According to W. Szyszkowski, "writing about privacy in law is not an easy thing, primarily because the concept is not specified and because it is used in in many meanings. This concept, so long unknown to the dictionaries of language, is new to the world, and yet corresponds to an old idea" (Szyszkowski, 1985). The right to privacy ranks as a first-generation human right, and the sphere of privacy of life as a separate legal good is now protected in most modern legal systems. This right is an ambiguous phenomenon, on the one hand, there are often polemics on the expansion of the protection of the right to privacy, which is associated with an increase in threats to individual privacy, while on the other hand, it is requested that the right to privacy be guaranteed as widely as possible to a person with the possibility of unlimited independence and freedom, while minimizing interference from the authorities or specialized entities. It is difficult to find an unambiguous definition of privacy in the legal systems of individual countries, since the establishment of legal concepts is more the domain of legal doctrine and jurisprudence than the legislature (Hołda, Hołda et al., 2008). The right to privacy is a complex and time-varying concept, and it should be noted that it has not been defined either in any international act or in the internal laws of individual states. However, the lack of a single universal definition of the right to privacy does not mean that the term lacks meaning, since "in a sense, all human rights are manifestations of the right to privacy" (Mednis, 2016). It is known that the definition of privacy was first given by the lawyers of the common law system, S. Warren and L. Brandeis, defining privacy as the right to be and to be left alone, i.e. a state of affairs in which an individual would be left to himself in all the essential affairs of his physical and spiritual life (not related to the conduct of public activities) when he so wishes and when this does not conflict with momentous general interests and the rights and freedoms of third parties (Warren, Brandeis, 1890).

FIGURE 1. DATA PRIVACY AND GDPR COMPLIANCE - CONDITIONS AND ASSUMPTIONS.

The issue of privacy relates to an individual's self-interest, his well-being and the actions he takes to protect this value. Privacy is also related to the sphere of an individual's activities that are not subject to external control. Accordingly, we can define this concept as a space of free movement, an area of independent activity that is free from supervision by others. Physical space, objects, structures to which others do not have access can be included here. Bearing in mind the socio-cultural system in which the individual functions, the sphere of privacy is defined differently in terms of interaction, degree of distance and level of isolation. Privacy as adopted constructs the entitlement of the individual to form the private sphere of life in such a way that it is inaccessible to others and free from any interference. This area is also protected because the right is granted to each person to have exclusive control over those areas of life that do not involve others, and in which freedom from the inquisitiveness of others is a condition for the development of the individual (Braciak, 2002). In addition, the values associated with it do not have to be linked to some other right or interest of the individual, since the individual is not obliged to justify the reasons and purposes of the prohibition of interference with his privacy by invoking the goods traditionally recognized by the law such as: good name, secrecy of correspondence or respect for one's integrity (Safjan, 2002). As M. Safjan states, "privacy is to be protected precisely because and only because the right is granted to each person to have exclusive control over that sphere of life which does not concern others, and in which freedom from the curiosity of others is a kind of conditio sine qua non of the free development of the individual" (Safjan, 2006).

II. THE POLISH LEGAL ORDER

Until 1997, that is, until the enactment of the Constitution of the Republic of Poland, none of the previous basic laws contained provisions relating to the right to privacy. This was due to the fact that at the time it was not seen as necessary to protect it in the absence of specific threats, and the right was also not proclaimed in the constitutions of foreign countries.

The Polish Constitution of April 2, 1997 The Polish Basic Law formulates the subjective right to the protection of private life in Article 47. This article constitutes a kind of lex generalis for other constitutional norms on privacy, which are contained, among others, in Article 49 (protection of the secrecy of communications), Article 50 (guarantee of the inviolability of the dwelling), Article 51 (right to the protection of personal data) or Article 53 paragraph 7 (exclusion of the possibility for public authorities to oblige a citizen to disclose his worldview, religious beliefs or confession) of the Constitution; they complement the norms of Article 47. The protection of privacy is also one of the grounds for excluding the openness of a hearing from Article 45(2) of the Constitution and one of the basic components of consumer protection guaranteed by public authorities (Article 76).

The right to privacy has been placed in the category of non-derogable rights, which means that it cannot be subject to any restrictions under martial law and state of emergency (Article 233(1) of the Polish Constitution). This reinforces its character and rank among other rights. The explicit guarantee of this right, notwithstanding the provisions of Article 51 of the Constitution, has a momentous function and means that private life is generally protected (only exceptionally, on the basis of the Constitution or laws, can this protection be waived) (Boć, 1998). According to the wording of Article 47 of the Constitution, everyone has the right to legal protection of private life, family life, honor and good name, and to decide on his personal life. This article regulates the individual's right to legal protection of his spheres of life, and grants him the right to decide his "personal freedom" by excluding any outside interference in the sphere of the individual's personal life. The right to privacy in this context means that the state undertakes, on the one hand, not to interfere in the constitutionally defined scope of the lives of individuals, and on the other hand, provides adequate protection when such action has already been taken. It follows from the stylization used in Article 47 that this right applies to all individuals, including those residing in Poland, regardless of their citizenship, as only people are capable of having family life, private life, honor and good name (Banaszak, 2009).

According to Article 47 of the Constitution, the totality of the right to privacy consists of three elements that specify this right: "private life," "family life" and "personal life" (Sieńczyło-Chlabicz, 2006). These concepts should be understood in accordance with the standards operating in that circle of civilization in which Polish society lives. As B. Banaszak rightly points out, "assuming the rationality of the legislator's action, it should be assumed that, aware of what the various terms used in Article 47 have in common, he did not wish to give their distinction disjunctive features, and, having emphasized the differences between them, stressed that they can be treated as self-contained elements. He did so in order to extend all the more fully the protection of what he understood by the term privacy" (Banaszak, 2009).

The concept of private life is perhaps most accurately understood by contrasting it with public life. Private life is the qualities, inner personal (individual) experiences of a person and their evaluations, reflections on external events and his sensory impressions, also the state of health (Judgment of the Constitutional Tribunal of May 19, 1998, U 5/97, OTK 1998, 4/46) and financial situation (Ruling of the Constitutional Tribunal of June 24, 1997, K 21/96, OTK 1997, 2/23). They are not intended to be publicized, and the person concerned himself decides on the circle of people with whom he wishes to share them. Private life, understood in this way, refers to personal life, social life, inviolability of the dwelling, secrecy of correspondence and protection of information concerning the person (as "the right to remain in peace" or "the right of the individual to be left alone"). Family life, related in part to private life, means remaining within the circle of family, friends or close acquaintances. It includes relations to the spouse and those in a relationship of kinship and affinity . Family life already refers to a broader sphere of experiences and events related to the family (not only to those who share a household with a person), but also to certain experiences or secrets of past generations of a family, memory of them, experiences, impressions, habits (Banaszak, 2009). Being one of the manifestations of private life, family life falls under the commonly used term "right to be left alone." Personal life, in turn, should be considered other dimensions of private life or family life than those presented so far. As an aspect of personal life, it would therefore be appropriate to consider the right of the individual to decide unhindered about himself and his life, conduct, as well as to decide on leisure activities, making acquaintances, the object of personal interests, where and how to live, style of dress, the question of making and maintaining certain acquaintances and relationships with other people.

The freedom (right) to decide on one's personal life, derived from Article 47 of the Constitution of the Republic of Poland, is related to the integrity of the existence of the private sphere, an immanent component of which is the granting of a person the right to live a life arranged according to one's own will with all external interference limited to the minimum necessary. Everyone is free to decide on his or her own life, but this is not an absolute right due to its limitation by other constitutional principles. Therefore, this provision should be understood as a prohibition on encroaching on the sphere of privacy of any person and, at the same time, as a prohibition on state authorities taking actions that violate this sphere (Boć, 1998). Only exceptionally, on the basis of the Constitution or on the basis of a law, can the protection guaranteed by the content of Article 47 be waived, either by the voluntary express consent of the subject concerned. Statutory restrictions may apply, for example, to information obligations (statistical, registration, medical) imposed on a citizen to the extent necessary in a democratic state under the rule of law, or may be applied to

persons performing public functions or managing public funds, insofar as it is related to their activities. Article 47 of the Constitution of the Republic of Poland prohibits state interference in the legally established sphere of human life, while in the case of violation of this sphere, it orders the state to provide protection to the individual. Polish Constitutional Tribunal has repeatedly pointed out that "the right to privacy, like other rights and freedoms, is not absolute and, for this reason, may be subject to limitations. However, these restrictions should satisfy constitutional requirements. They must be supported by other constitutional norms, principles or values. The degree of restriction should be in appropriate proportion to the importance of the interest that the restriction serves. Due to the principle of proportionality, it is necessary to compare the protected and sacrificed good and harmonize the conflicting interests" (Judgment of the Constitutional Tribunal of October 21, 1998, K 24/98, OTK 1998, 6/97).

The right to privacy, as expressed in Article 47 of the Polish Constitution, also extends in its construction to the good name and honor of a particular person. Honor is defined as an individual's inner conviction of his or her worth in society and the resulting due respect, while good name is an individual's concern for his or her good reputation among other members of society. Violation of these values is related to the actions of third parties and usually involves the dissemination or publication of false information that may damage the name or image of a certain person. While the violation of the sphere of privacy relates to information about the real private life of a certain person, obviously without his consent, the violation of honor and good name relates to the situation in which the information is untrue, and whose purpose is solely to cause harm or damage (Post, 1989). Such elements as good name and honor, which define privacy, are protected as intrinsic goods (Article 23 of the Civil Code), but this does not change the fact that their protection is a guarantee of the inviolability of private life, while ensuring respect for human dignity and existence.

The Constitution of the Republic of Poland provides in Article 47 the right to privacy, and its consequences are evident precisely in the content of Article 51. The Constitutional Tribunal pointed out that the cited provisions of Article 47 and Article 51 of the Constitution remain in a specific mutual relationship: the right to privacy, as statued in Article 47 of the Constitution, is guaranteed, among other things, in the aspect of personal data protection, as provided for in Article 51 of the Constitution. The latter, an elaborate provision, referring as many as five times to the condition of legality - expressis verbis in paragraphs 1 and 3-5, and indirectly by invoking the principle of a democratic state of law in paragraph 2 - is a concretization of the right to privacy in procedural aspects" (Domagała, Podkowik and Zubik, 2018). It is among the norms of Article 51 that direct guarantees for the protection of personal data have been included.

Article 51 of the Basic Law stipulates, among other things, that no one may be obliged other than by law to disclose information concerning his person. Public authorities may not obtain, collect and make available information about citizens other than that necessary in a democratic state under the rule of law. Everyone has the right of access to official documents and datasets concerning him. The limitation of this right may be determined by law. Everyone has the right to request the rectification and removal of information that is untrue, incomplete or collected in violation of the law." The protection of personal data from its misuse, i.e. harmful to the individual, has become one of the fundamental values protected in the modern world. The Constitution, in the wording of Article 51, guaranteed the individual's right to the protection of personal data, the scope of which includes, among other things: the condition of a statutory basis for the disclosure by an individual of information concerning his person (Article 51(1)), the prohibition of obtaining, collecting and providing access to information about citizens other than that necessary in a democratic state under the rule of law (Article 51(2)), as well as the right of an individual to access relevant documents and data sets and to demand the rectification or removal of data that is false, incomplete or collected in a manner contrary to the law (Article 51(3) and (4)). The article also contains a general constitutional proclamation that "the rules and procedures for collecting and providing access to information shall be determined by law" (Article 51(5)) (Judgment of the Constitutional Tribunal of May 19, 1998, U 5/97).

The principle expressed in Article 51 (1) that no one (and therefore not only a citizen) can be obliged other than by law to disclose information about himself makes it so that a statutory basis will be required in our country for all information obligations of any legal entity. Therefore, only a regulation on the basis of a law can obligate information about oneself. The freedom of the individual to disclose information concerning his person, indicated in Article 51(1) of the Constitution, implies the right of the individual not to disclose information to other entities, especially to public authorities. The consequence of this is the prohibition directed at the indicated entities to make any attempt to obtain such information by indicting such persons. In addition, the indicated freedom includes the freedom from disclosure of any information concerning any not only strictly personal, but also public behavior of the individual, and its particular expression is the freedom from disclosure to public authorities of one's worldview, religious beliefs or religion.

The right to decide whether to disclose one's personal data is granted to "everyone." Article 51(1) broadly defines the subjective scope of the right guaranteed therein. The term "anyone" used should be understood as "everyone", so we are dealing with a human right. As J. Barta, P. Fajgielski and R. Markiewicz rightly point out, "The Constitution does not impose the necessity for an individual to meet any conditions, e.g. regarding age, mental state, legal capacity" (Barta, Fajgielski and Markiewicz, 2015). It is also not a right belonging to "public rights," so judicial deprivation of such rights does not deprive a person of the ability to decide on the release of personal data.

The Polish legal system is based on the principle of self-determination of information about one's own person. This principle applies to all persons and is linked to the possibility of supervising the use of such information, through the ability to

edit one's own personal data (Banaszak, 2009). The Constitution of the Republic of Poland, formulating in Article 51(4) the right to demand the rectification and removal of information that is untrue, incomplete or collected in violation of the law, "speaks of a specific right arising from the general principle of Article 47 of the Constitution, which includes the right to present/form one's public image, drawn against the background of the data collected by the authority" (Judgment of the Constitutional Tribunal of December 12, 2005, K 32/04, OTK-A 2005, 11/132). It should be noted that this right relates to the totality of information at the disposal of public authorities, with Article 51(4) "not referring to the type and scope of information collected about a person, but only to the question of its veracity" (Judgment of the Constitutional Tribunal of March 3, 2003, K 7/01, OTK-A 2003, 3/19). "Mistaken or false personal information can deprive a citizen of his or her right to a job, to social assistance or to unemployment benefits. With the automation of decision-making, the distribution of various benefits and allowances, personal information takes on a new meaning. The right to demand the rectification or removal of information that is untrue, incomplete or collected in violation of the law cannot be subject, unlike the right of access, to restrictions. [...]. If false information about a person is left within the administration, it does not allow for rational decision-making and its lawful operation. The exercise of this right primarily by citizens also serves the efficient and fair exercise of public authority" (Lipowicz, 1984).

No state body can process information about citizens without considering the possibility of scrutiny from them. The Constitution indicates legal guidelines, which the Data Protection Law clarifies. Datasets or documents classified even as secret, e.g. for reasons of state security, can be subjected to verification at the request of the person to whom they pertain (arguably, this control in this case will not take the form of direct access of the interested party to the data, but thanks to the possibility of appeal, for example, to the President of the Office for Personal Data Protection and then to the Supreme Administrative Court, the national path will be exhausted). In addition, the right in question can only be limited by norms of statutory rank. The legislator meant the law not as one specific act, but as an act of a specific type.

Anyone who finds that his or her personal data is incomplete, erroneous and inappropriate may request that it be corrected, and may also request that data collected in violation of the RODO be deleted. The disposer of the data is therefore only the data subject. In case of doubts in determining the entity with the authority to dispose of the data, the competent authority to resolve the dispute in question, and thus ensure effective protection, is the data protection authority and then the court.

Within the broad issue of the scope of personal data protection under the Constitution of the Republic of Poland, other constitutional regulations than those presented so far are also relevant, indirectly relating to personal data protection, but which have a significant impact on the protection of personal data processing in Poland.

The freedom and protection of the secrecy of communication guaranteed under Article 49 of the Constitution applies, for example, to computer systems used to process personal data. J. Barta, P. Fajgielski and R. Markiewicz take the position that the flow of information in these systems enjoys the protection of personal data, in relation to open computer networks, while in relation to closed systems it is outside the scope of constitutional guarantees of the secrecy of communication (Barta, Fajgielski and Markiewicz, 2015).

Another right contained in the Constitution of the Republic of Poland within the protection of personal data is the right to information, guaranteed in Article 54 and Article 61. Here we have a kind of conflict of constitutionally protected rights, since on the one hand the individual has the right to protect his personal data, while on the other hand he can demand to obtain information about other people. Detailed regulations in this regard can be found in the Law on Access to Public Information [Act of September 6, 2001 on access to public information (Journal of Laws 112/1198)].

It would be further necessary to point to the Constitution's "freedom of economic activity" as expressed in Article 22. Restrictions on freedom of economic activity are permitted only by law and only for reasons of important public interest. There is no reason not to accept that, in certain cases, an element of activity or even such activity itself may be the processing of personal data (Paczocha and Rogowski, 2006). The restrictions signaled in the Constitution in this regard find a basis precisely in the commented law on the protection of personal data; at the same time, one can point, at least in most cases, to an important public interest supporting these restrictions.

However, a key prerequisite for the actual realization of the constitutional legal status of an individual is the existence in a given state of the means of protection of freedoms and rights of a human being and a citizen, referred to in the Constitution in Article 77 - Article 80. These constitutional guarantees are a set of all solutions and institutions in force in the legal system of a given state, ensuring or enabling the practical and effective realization of freedoms and rights of a human being and a citizen on its territory (Matwiejuk, 2009). On this basis, therefore, expressed in the Constitution, among other things, the personal right of a citizen of the Republic of Poland to obtain and collect information about a person only such as is indispensably necessary in a democratic state under the rule of law, is ensured precisely thanks to the existence of formal guarantees and the functioning of the body that upholds the observance of individual rights. The establishment and activities of the President of the Office for the Protection of Personal Data is therefore an institutional-legal guarantee of the realization of the protection of human rights and freedoms in the Republic of Poland.

Article 51(5) of the Constitution contains a provision regulating the rules and procedures for collecting and providing access to information. The nature of Article 51(5) was pointed out by the Constitutional Tribunal, which in its February 19, 2002 judgment indicated that the principle of the exclusivity of the law includes the rules and procedure for collecting and making available information. The provision refers the TK to the collection and release of information by private entities. In

the opinion of the Constitutional Tribunal, "regardless of possible doubts about the scope of Article 51(5) of the Constitution, on the basis of the current Constitution, it is undisputed that matters related to the processing of personal data fall within the scope of the exclusivity of the law" (Judgment of the Constitutional Tribunal of February 19, 2002, U 3/01).

III. THE EUROPEAN LEGAL ORDER

The right to privacy is classified in domestic, EU and international law as a fundamental human right. It is reasonable to conclude that this right is protected in almost all legal systems. It is guaranteed by the 1997 Polish Constitution, which states in Article 47 that "Everyone has the right to protection of his private life, family life, honor and good name, and to decide on his personal life, "and in Article 51, paragraph 1 of which states that "No one shall be obliged otherwise than by law to disclose information concerning his person".

In European Union law, privacy initially found no protection in the Treaties establishing the Communities, but over time an autonomous system for the protection of fundamental rights, including the right to privacy, has developed. The Court of Justice of the European Union (CJEU) has played, and continues to play, a special role in this regard, and for decades in its jurisprudence has emphasized that human rights are part of the general principles of the former Community law, that is, the principles taken into account in the application and interpretation of EU law (derived by the CJEU from the treaties), derived from the cultural and constitutional traditions of EU member states and in the European Convention on Human Rights (ECHR) (Braciak, 2004). The protection of fundamental rights proved so necessary that it appeared in case law precisely in the context of general principles of law on the occasion of the 1969 Stauder case (CJEU judgment 29/69, Stauder v. Ulm, EU: C: 1969: 57). This concept was developed in subsequent rulings until the key moment for the development of the protection of fundamental rights, and therefore the right to privacy - the recognition of the rights contained in the Charter of Fundamental Rights under Article 6 of the Treaty on European Union (TEU) in the version of the consolidated version of the Treaty on European Union (Lisbon Treaty), when fundamental rights were systematized and highlighted, and the Charter of Fundamental Rights (CFR) gained the same legal force as the treaties. Article 6 of the TEU ensures respect for human rights and fundamental freedoms as constitutional traditions common to member states, as well as respect for the fundamental rights contained in the ECHR as part of general principles of law . Thus, with regard to the right to privacy, the European Union is obliged to respect the rights under Article 8 of the ECHR, i.e. the rights to respect for private and family life covering four spheres: protection of private life, family life, correspondence, dwelling. The right to privacy is protected by Article 7 of the CFR (privacy in the broader sense), which under the Lisbon Treaty reads: "Everyone has the right to respect for private and family life, home and communications". Interestingly, this right is similar in scope to that set forth in the ECHR . The right to privacy is also guaranteed by Article 8 (information privacy) of the CFR.

The right to the protection of personal data and the various legal regulations developed over the years in this regard in the era of globalization of personal data processing acquire crucial importance for an individual and a society wishing to develop free from embarrassing state interference. The protection of personal data pursues precisely this goal and deals with broad aspects of the protection of personal freedom threatened especially in the era of development of various forms and tools of communication and data processing. The protection of personal data is a difficult task, mainly because it requires reconciling the conflicting interests of increasing access to information and not restricting the sphere of privacy (Szpor, 1999).

The protection of personal data is provided by a number of international systems, including in particular the Council of Europe system, which provides protection for personal data under several international conventions (including the Council of Europe Convention No. 108 of January 28, 1981 on the Protection of Individuals with regard to Automatic Processing of Personal Data, drawn up in Strasbourg). In the European Union, personal data is protected, first, at the highest level of generality in Article 16 TFEU, from which it follows that everyone has the right to the protection of personal data concerning him. The basis for protection is also contained in the CFR. Article 8 of the Charter states that "Everyone has the right to the protection of personal data concerning him". In addition, personal data finds a basis for protection in several directives, the most important of which is Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Other containing bases for the protection of personal data are Directive 2000/31/EC of the European Parliament and of the Council of June 8, 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market, Directive 2002/58/EC of the European Parliament and of the Council of July 12, 2002. concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), Directive 2006/24/EC of the European Parliament and of the Council of March 15, 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC. In addition to the directives, regulations are relevant to the basis of personal data protection, including Commission Regulation No. 611/2013 of June 24, 2013 on measures applicable to personal data breach notification and Regulation no. 45/2001 of the European Parliament and of the Council of December 18, 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. The problem of personal data protection proved to be so important that data protection reform

was undertaken at the EU level. The development of technology made the solutions of Directive 95/46/EC inadequate and no longer provided an adequate degree of data protection. In fact, it was the development of technology, in particular the extremely rapid development of the Internet, that forced changes in the model of personal data protection in order to adapt data protection methods to the newly emerging problems. The work on reform, which has been going on since 2012, has actually already had its finale, for on April 14, 2016, the draft General Data Protection Regulation was adopted by Parliament. Work on the reform began on January 25, 2012, when the Commission proposed a legislative package consisting of the General Data Protection Regulation and the Directive on the Protection of Personal Data Processed for Law Enforcement Purposes. The regulation represents a shift from harmonization of member states' laws to unification of laws. It will be directly applicable two years after its entry into force. The legal basis for the protection of personal data in the European Union is thus found in a number of acts at various levels - both in the treaties and in secondary legislation.

Personal data protection as a right can primarily be understood in two ways: as a separate, independent right or as an element of the right to privacy. In the Polish science of law, a third view is also clear - about the intersection of these two systems of protection and their independence (Mednis, 1995). In this view, if a certain state of affairs does not find protection under the protection of personal data, it can find protection through the protection of privacy. It seems that such a view can be successfully transferred to international and EU law. Personal data itself in Directive 95/46/EC is understood as "any information relating to an identified or identifiable natural person". This person, in turn, is "a person whose identity can be established directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity". The key element of this definition, therefore, is the fact that a person is identified (or identifiable) - linking specific information to a specific person. Each time, therefore, deciphering whether the information in question is personal data within the meaning of Article 2 of the Directive will require consideration of whether the information makes it possible to identify a specific person. The regulation defines personal data similarly, adding specific types of sample identifiers in the definition of an identifiable person: "an identification number, location data, an online identifier, or one or more specific factors identifying the physical, physiological, genetic, mental, economic, cultural or social identity of a natural person". These definitions therefore emphasize not the content of the data itself, but whether the information can be linked to a specific person (Quinn and Malgieri, 2021). The recitals to the General Data Protection Regulation provide important guidance: "To determine whether an individual is identifiable, it is necessary to take into account all reasonably likely means (including the extraction of records relating to the same person) that are reasonably likely to be used by the controller or another person to identify the individual directly or indirectly. In order to determine whether a particular means is reasonably likely to be used to identify an individual, it is necessary to take into account all objective factors, such as the cost and time required to identify the individual, and to take into account the technology available at the time of processing, as well as technological advances". There is no doubt that personal data will be such information as name, surname, PESEL or the number of a document that identifies a person, such as an identity card or passport, or usually an address. What is problematic, however, is such information as a computer's IP address and e-mail address. It goes without saying that the assessment of whether information constitutes personal data must be made on a case-by-case basis, taking into account the specifics of that particular case (Quinn, 2021).

The directive also introduces a separate category of data, so-called sensitive data. Directive 95/46/EC, Article 8 defines them as such personal data that reveal information about racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health or sex life data. Even a preliminary analysis of the cited provision makes it possible to conclude that sensitive data is the specific type of information that potentially most commonly causes discrimination. This specific category of data is, in principle, subject to the prohibition of processing. The General Data Protection Regulation similarly indicates the scope of sensitive data, additionally listing sexual orientation, biometric data and genetic data among them (Jagielski, 2010).

Biometric data, on the other hand, is "personal data that results from special technical processing, relates to physical, physiological or behavioral characteristics of an individual, and enables or confirms the unique identification of that person, such as facial image or fingerprint data". Genetic data is "concerning the inherited or acquired genetic characteristics of a natural person, which reveal unique information about the physiology or health of that person and which result in particular from the analysis of a biological sample from that natural person". These two new categories of data introduced in the regulation seem to respond to new types of information that may constitute personal data. It is also worth noting the meaning of terms relevant to the protection of personal data: processing, controller and processor. Processing means "any operation or set of operations which is performed on personal data, whether by automated or other means", among examples, the Directive lists collection, storage, modification, retrieval. A controller is an entity that determines the purposes and means of processing, and can be a natural person, a legal entity or a public authority. A processor, on the other hand, is an entity that processes data on behalf of the controller, which, like the controller, can be a natural person, a legal entity or a public authority. These definitions do not experience significant changes in the regulation. Personal data is protected in the European Union by several directives. Thus, the scope of protection includes both the collection and processing of data by private parties and the collection and processing of data by EU institutions. The protection covers both electronic communications and telecommunications. The standard set by the provisions of Directive 95/46/EC is a minimum standard, and the understanding of the terms "personal data" and "data

processing" adopted in the directive is broad. This allows personal data to be covered by a broader scope of protection (Barta, Fajgielski and Markiewicz, 2015), which in the EU is also affected by securing this protection with sanctions and the possibility of asserting one's rights. Already the Treaty on the Functioning of the European Union in Article 16 par. 2 ensures that compliance with the principles of personal data protection is subject to control by an independent authority. A similar provision is found in the Charter of Fundamental Rights in Article 8 par. 3. However, the scope of the directive in question has experienced some exemptions. Thus, by virtue of Article 3, the Directive does not apply to the processing of data in the course of activities relating to a certain public interest, which here includes public security, defense, safety (broadly defined to include the economic well-being of the state). In this regard, this exclusion is similar in rationale to permitted restrictions on privacy and interference with the right to privacy (Naef, 2022). Another exclusion from the scope of the directive is the processing and collection of data "by an individual in the course of activities of a purely personal or domestic nature".

IV. Personal data protection

The protection of personal data over the years has evolved into privacy protection in formal-legal doctrine and has also received protection through various legal instruments, mainly civil law (Jagielski, 2010). The demand for the protection of personal data can be asserted in court, since as an individual subjective right it is legally protected. As a result of the inclusion of the right to privacy in the category of constitutional human rights, the protection of personal data has gained protection through constitutional-legal instruments. As a result of the increase in the importance of the rights of the individual and the expression of the protection of human dignity, a new category of his rights was formed, i.e. the right to the protection of personal data, and an individualized category of the right to the protection of personal data emerged from the right to privacy (Litwiński, 2009). The foundation that was undoubtedly laid by the development of the right to privacy and the development of information autonomy, as well as the globalization of information and access to it, has brought the problem of individual data protection into the spotlight. Thus, data protection corresponds with personal freedom and protects the legal aspects of it under the threats posed by modern technologies (Tinnefeld, 1999).

Sociologist G. Simmel, stating that "the basis of all human relations is that people know something about each other", stressed the importance of people's autonomy in the process of information exchange (Simmel, 1906). The impulses for the creation of the right of people to decide the fate of the data concerning them are precisely the premises that G. Simmel wrote about, as well as the results brought about by the vigorous development of information technology and technologies for human communication (e.g., the Internet, cell phones, etc.) and the hegemony of information in modern society combined with the increasing intrusion into the sphere of privacy. Technological advances have increased the importance of information capital, and data from the public and private spheres collected in information networks, in a variety of huge collections, "data banks" of institutions, private administrators, private companies, covered the entire world (Solove, 2004). Personal data was thus used in a variety of ways to, for example, manage a business, conduct medical research, or use personal information in social life or politics.

The purpose of personal data protection is to guarantee decision-making in the sphere of information by the individual, and at the same time to ensure the realization of his legally protected interest to privacy and intimacy (Sakowska-Baryła, 2015). An individual, on the basis of the constitutional right to the protection of personality, has the right to information, by which is meant the right to be informed about where, when and for what purpose data concerning him or her is transferred, as well as the right to be informed about how the data will be processed and what consequences this will have for him or her. The right to information also includes the existence of the right not to know. This is mainly related to the developing tendency, for example, to conduct genetic research that determines the life of an individual, which, if used improperly, gives the opportunity to dispose of other people's data and control other people's behavior (Brown, 2019). This contradicts the concept of the right to protection of personality, since under these conditions a person is completely deprived of his right to freedom to decide on his own conduct and dispose of information about himself. The formation of effective methods of protecting personal information in the context of each individual's right to privacy has long been the subject of consideration by the doctrine of law (Kędzior, 2019). The findings of the doctrine and case law have contributed to the resolution of significant doubts and overcoming various difficulties of interpretation, application and compliance with the law of personal information protection (Szpor, 2009). As a result, a call has been made for increasing the effectiveness of the legal regulation of personal data protection. This, in turn, provides the impetus to explore the research areas that exist at the intersection of administrative law, constitutional law along with the influence of European law and international regulations on the development of national standards for the security of personal data processing. There are two main reasons for creating legal mechanisms for the protection of personal data. First, the previously existing options used in civil and criminal law, which failed from the point of view of the preventive function, proved to be ineffective. Secondly, it became necessary to introduce public-law means of protection, that is, institutional protection, rather than protection that has only its source and legitimacy in the autonomous dispositions of the individual (Safjan, 2002).

In the case of data protection, it is a matter of strengthening the autonomy of the individual in the realization of his rights by means of procedures and measures of a legal, organizational and technical nature. The need to create new and adequate to the developing computerized and modern reality mechanisms for the protection of the individual and his rights is a condition for the further development of this right. In a

democratic state of law, the basis for securing individual rights is the existence of functional, legal and environmental regulations. Not only extensive, but also interpreted in accordance with national and international standards, conditions of protection relating to the processing of personal data are to protect against existing threats. The new protection mechanisms that are being created, regardless of whether they are created at the national or international level, must be compatible with each other, and the same assumptions should be at their core (Dreyer and Schulz, 2019). Shaping the protection of an individual's rights in connection with the processing of personal information about him is a process somewhat different from the previously formed mechanisms for the protection of human rights and freedoms.

V. Summary

The concept of the development of the protection of the rights of the individual in the field of personal data was shaped in parallel on both the international and national levels. Significant facilitation, especially in the supranational aspect, was the constantly developing, active and mutual cooperation in most areas of cooperating states, primarily on the level of transmission of information of a personal nature. The developing international regulation played an important role, as strongly as the ongoing institutionalization processes within the framework of European integration. The inclusion of the protection of personal data in the constitutional catalog of human rights protection and the giving of concrete content to the provisions of the Constitution, is undoubtedly linked to the development of this process internationally. Thus, the formation of the system of personal data protection is undoubtedly related to the developed transnational acquis both on the doctrinal and normative level. The development of civilization, the constantly evolving aspects of personal data protection and the buoyant development of these issues have consequently also become the focus of various fields of law from constitutional-legal matters through regulations in administrative law or European law. This gave the opportunity to develop standards in the field of personal data protection applicable to an unspecified addressee and to unspecified matters. Thanks to this, personal data protection has developed and established its place among other existing branches of law. The importance of personal data protection to the right to privacy is very important. All operations performed on personal data whether on a professional level or during private, hobby and scientific activities relate to the protection of individual privacy (everyday seemingly trivial behaviors, such as collecting geolocation data, creating profiles of Internet users, or creating a cell phone holder's call log mean, regardless of the original and main purpose of the data controller to control the user's whereabouts or movements, identify the identity of callers, and identify individuals based on indicated information on the web about behavior, preferences, interests, leisure activities). Thus, in order to ensure the surest protection of individual privacy, it is necessary to simultaneously develop homogeneous and effective mechanisms for the protection of personal data, which are essential guarantees for the protection of human rights and freedoms today.

VI. References

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