**Personal data protection in Ukraine**

Personal data as a legal institution that requires protection appeared in Ukrainian legislation in 2011, with the entry into force of the Law of Ukraine "On Personal Data Protection" (hereinafter - the "PD Law") on 1 January 2011. It was a shocking news and a headache for the society and government agencies, the country was shaken by a wave of various seminars and workshops on personal data protection, and a specialised service was created, which itself did not quite understand how to protect and safeguard personal data, which no one had paid any attention to before, but it turned out that personal data is the same non-property values and benefits as life, dignity, and business reputation. Personal data databases began to be registered on a massive scale, which paralysed the work of the personal data protection service.

Prior to that, only Article 23 of the Law of Ukraine "On Information" was devoted to personal data, and the Constitutional Court of Ukraine in its Decision No. 5-zp of 30.10.1997 drew attention to the need to bring Ukrainian legislation in line with European standards as early as 1997.

At the beginning of 2012, the same Constitutional Court of Ukraine in its Decision No. 2 rp/2012 dated 20.01. 2012, detailed that information about a person's personal and family life (personal data), inter alia, includes nationality, education, marital status, religious beliefs, health, financial status, address, date and place of birth, place of residence and stay, etc., data on personal property and non-property relations of this person with other persons, including family members, as well as information on events and phenomena that have occurred or are occurring in the domestic, intimate, social, professional, business and other spheres of life of a person, except for data on the exercise of powers by a person holding a position related to the exercise of functions of the state or

No sooner had the service for personal data protection become operational than the Ukrainian Parliament Commissioner for Human Rights (the "Ombudsman") became the main body responsible for personal data protection on 1 January 2014.

7 years have passed, and lawyers continue to repeat that there is civil, administrative and criminal liability in the field of personal data protection. However, this is all dry, amorphous theory, and what happens in practice?

When considering disputes over compensation for non-pecuniary damage, in particular in cases of disclosure of personal data and invasion of privacy, one should proceed from the presumption that the defendant has caused non-pecuniary damage to the person and the defendant's obligation to refute such a presumption, as stated in the Resolution of the Supreme Court of Ukraine dated 27.09.2017 in case No. 6-1435c-17.

The struggle for personal data protection has become widely publicised in the area of consumer lending and countering collection companies. Banks often transferred and transfer personal data as part of the assignment of claims and factoring operations of their debtor clients to third parties. Instead, and by virtue of the provisions of Article 10 of the Law of Ukraine "On Personal Data Protection", financial institutions act within the scope of their powers to protect their rights, and in the agreements between banking institutions and their clients, they additionally prescribe the procedure for transferring personal data (for example, the Ruling of the High Specialised Court for Civil and Criminal Cases of 26.10.2016 in case No. 473/2644/15-c).

The Ombudsman is on guard to protect our personal data

The provisions of Art. 28 of the Law of Ukraine "On Personal Data Protection" regarding liability in the field of personal data protection do not contain any specifics, but are only general in nature and refer to the legislation of Ukraine in general.

In turn, Articles 188-39 of the Code of Administrative Offences of Ukraine (the "CAO") provide for administrative liability in the form of various fines ranging from UAH 1,700 to UAH 17,000.

Pursuant to the provisions of Article 255 of the CAO, the Ombudsman is entitled to draw up reports on administrative offences, after which the administrative case file is submitted to the court.

Taking into account the annual reports of the Ombudsman, in 2016 the Ombudsman conducted 76 inspections of personal data owners, as a result of which 33 orders to eliminate violations of the legislation on personal data protection identified during the inspection were issued and submitted for mandatory implementation, and 5 reports on administrative offences were drawn up.

Last year, the number of inspections was much lower - 45, which resulted in 38 orders to eliminate violations of the personal data protection legislation and 34 reports on administrative violations being issued and submitted for mandatory compliance.

As a result of the courts' consideration of cases of administrative offences, in 2 cases individuals were found guilty and an administrative penalty was imposed, in 13 cases the person was found guilty, but the proceedings were closed due to the expiration of the time limit for imposing an administrative penalty at the time of the case consideration.

Perhaps the most high-profile case of this year was the bringing to administrative responsibility and imposition of a fine of UAH 5,100 on the military commissar of the Lviv Regional Military Commissariat for posting on the official website of the military commissariat lists of citizens subject to conscription for military service who failed to report to the military commissariat (Resolution of the Lychakiv District Court of Lviv of 19.02.2018 in case No. 463/255/18). The case is currently being heard in the appellate instance, and it is likely that the person will be able to avoid liability. The main problem with bringing to administrative liability is the archaic and outdated provisions of the Code of Administrative Offences, as the court must decide on bringing to liability within 3 months from the date of the offence, and in case of a continuing offence - no later than three months from the date of its discovery. It turns out that a person often manages to avoid quite substantial fines. Unfortunately, this is not mentioned in the Ombudsman's annual reports.

There is a crime, but what about liability?

Article 182 of the Criminal Code of Ukraine (the "CCU") provides for criminal liability for the mere fact of unlawful collection, storage, use, destruction, dissemination of confidential information about a person or unlawful alteration of such information, except as provided for in other articles of this Code, in the form of a fine of five hundred (UAH 8,500) to one thousand (UAH 1,700). ) to one thousand (UAH 1,700) tax-free minimum incomes, or correctional labour for up to two years, or arrest for up to six months, or restraint of liberty for up to three years.

Instead, if the offence relates specifically to non-compliance with the personal data protection procedure established by the legislation on personal data protection, which led to unlawful access to personal data or violation of the rights of the personal data subject, administrative liability cannot be avoided in accordance with the provisions of the Code of Administrative Offences.

According to the statistics provided on the website of the Prosecutor General's Office of Ukraine, approximately 150 crimes were registered monthly in 2017 under Article 182 of the Criminal Code of Ukraine, most of which were closed and only a few went to court, which generally indicates the inefficiency of law enforcement agencies, difficulties in investigating and bringing to criminal liability.

Conclusion.

Thus, it turns out that the system of personal data protection of our citizens remains at the level of ten years ago, fines and liability are periodically reviewed, but the mechanism of bringing to justice remains in the stage of reform and reflection.