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THE AGE AND THE SUBJECT SCOPE OF APPLICATION OF GENERAL DATA PROTECTION REGULATION IN THE EU IN RELATION TO CHILDREN

The article discloses the age requirements for the legality of processing personal data. It is concluded, that the current wording of Article 8 GDPR will lead to significant inconsistencies in practice. An analysis of the content of information provided to children is carried out. It is proposed to establish a relationship between the child's right to access the Internet and the right to protection of personal data. Web sites that contain violent content should have limited access through registration. During registration, the age of the person should be checked using online technologies. In the case of a registration of a person under the age of 18, companies must request the consent from the parents for child's registration and processing of personal data, or evidence of child's emancipation.

Key words*: personal data, GDPR, child, content, international law, European law, American law.*

Society in a network world is not restricted with any boundaries. This fact has both positive and negative aspects. On the one hand, the absence of any boundaries intensifies the processes of human development, because since 1969, when the special network, named ARPANET [1], was founded and became the prototype of the modern Internet, humanity got the opportunity to obtain information from any source, to communicate, to develop any projects, to use the copyright objects, etc. On the other hand, boundlessness of the Internet created the background for numerous legal violations, which constitute challenges not only for individual national legal systems, but also for European and international law in general. Illegal personal data processing is one of such violations.

In May 2018 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) will enter into the force. It is the first time, when the norms of direct action, which establish the protection of personal data of children, were established by the GDPR on the territory of Member States. A characteristic feature of legal regulation of personal data protection in the EU is equal status of children and adults, which is manifested in the absence of a separate legal act of the protection of children's rights online (compared, for example, with the United States, where the Act of the protection of children privacy online (COPPA) was adopted in 1998), and in the same definition of their rights regarding the personal data processing.

However, the GDPR contains norms, addressed directly to children. Particularly, according to the part 1 of article 8 of the GDPR processing of

personal data is considered to be legal in case of having the consent of a child, who is 16 years old. In cases with individuals, aged less than 16 years, it is necessary to obtain the consent of a child's parents or persons with parental responsibility in order to make data processing legal. Deviating from the general norms in paragraph 2 of part 1 of article 8, European lawmaker provided an opportunity for states to set a lower age limit, but not crossing the threshold level of 13 years' age [2].

Thus, the national legislation of Member States of the EU must set the requirement to obtain parents' or guardians' consent for the legitimacy of data processing of children, aged 13 to 16 years. Moreover, such a flexible approach to determining the age limit produces many legal collapses.

Firstly, the age requirements of the GDPR do not correspond with the Basic international law in the sphere of protection of the children rights – Convention on the rights of the child (hereinafter the Convention). Particularly, according to article 1 of the Convention, a child means every human, being below the age of 18 years old, if under the law, applicable to the person, he / she doesn't reach adulthood earlier. Thus, the analysis of legal norms of the Convention and the GDPR gives the opportunity to state the following legal assessment: 1. The norms of law of the EU contradicts international law; 2. This contradiction generates two streams of the legal requirements for children personal data processing: 18-year age limit is to be applied to all norms, that contain mention of a child. Article 8 has a separate legal regime: it is applied to children under the age of 13-16 years. This duality of the rules regarding children may potentially cause some misunderstandings and misuse of the GDPR [3].

In addition, peculiarities of national legislation of EU Member States regarding the emancipation of juveniles were not taken into account during the development of the GDPR. For example, in Lithuania or Estonia juvenile may be emancipated, when they are 15 years, on the basis of a court resolution. For girls the age of emancipation can be less than 15 years in the case of pregnancy [4]. Based on the fact, that due to emancipation the young person gets full capacity, 16 age limit regarding consent for personal data processing contradicts the content of the category "capacity", and therefore the article requires clarification in this part.

Secondly, article 8 of the GDPR brings an inconsistency among Member States in the European digital environment [5]. Particularly, the following question appears: if one state sets the requirement to get the parents' consent for the personal data processing at13 years age, and another one sets the same requirement at 16 years' age, will the consent, given by persons over 13-year age, be valid in this another state? In addition, as according to the article 3 of the Regulation it may be applied to enterprises, which are established or having domicile outside the territory of the EU, but offer services or goods to EU citizens, there is the incompatibility of the requirements of the GDPR with the American COPPA. Thus, according to the article 1 of COPPA a child is a person under 13 years' age [6]. The relevant position of the USA compared with the EU does not violate the norms of international law, because the USA is one of the three countries, which still

has not signed the Convention on the rights of the child. The fact of «non-signing» of the Convention tells of open disregard of the international standards in the sphere of children rights protection by the United States of America. Accordingly, U.S. companies will require consent only from parents, whose children have not reached 13 years' age, what will determine inconsistency of its activity to the higher age requirements of European countries.

From the point of view of practical implementation of this provision there may be some difficulties in checking of the age of the person, who registers or provides information. Existing web – sites and services usually determine the minimum age (at least 16 or 18 years) in the information field of services using. In the graph «The terms and conditions of use» is prescribed: users should be aware, that in case of use of the services they are not less than 16 years for all third parties [7]. Before GDPR's entry into force such privacy policy was generally acceptable. Further improvement of the mechanism of children rights online protection requires mandatory measures of verification of the person during registration, especially as to child's access to "adult" sites. Due to the above-mentioned, it is necessary to find out to which online content the requirement of parents' consent providing for the child's personal data processing is applied.

A literal interpretation of article 8 of the GDPR indicates that parents' consent is required only in respect of offers of information society services directly to a child.

According to the article 2 (a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, the information society service is any paid service, that is provided remotely using electronic means and upon individual request [8]. If to use this definition of information society services, the scope of applying of the requirement of parents' consent providing is limited. Particularly, consent is required only when paid services are provided, based on what the personal data processing in social networks, while receiving personal data from web – sites, that provide free services, remains outside the scope of the Regulation, and accordingly, child's personal data would remain unprotected. However, systematic interpretation of the GDPR testifies, that the developers of the Regulation have expanded the concept of «information society service». Thus, article 3 refers to the expansion of the GDPR rules for all operations, related to the offer of goods or services, regardless of payment. Of course, the ambiguity of these EU legal acts generates multiinterpretation for category «information society service».

The GDPR contains direct regulations of a restrictive nature, which will influence negatively on the state of children personal data protection. Article 2 of the Regulation provides the extension of its provisions only to the personal data processing totally or partially with automated means of data processing. The GDPR left out the data processing, which occurs outside of an automated system, – in case of social networks or non – skilled users [5].

In this context one of COPPA's rules may attract the attention. According to article 4 information about the child can be obtained from the web – site or online service, dedicated to children, through the home page of the web – site; preferential service; electronic mail; ads web-site or in chat [6]. This article has double restrictive meaning compared with the GDPR. At first, the American legislator has limited the effect of normative rules with indication on the direction of web – sites – they contain information and provide services, dedicated just for children. It means that, for example, the requirement of parents' consent does not apply for scientific and educational sites. Secondly, the completeness of the Internet sources list of information about a child limits the cases of its application.

Thus, age limits for the consent providing for personal data processing require some refinement. With the purpose of bringing into line with the normative provisions of the Convention on the rights of the child it is necessary to set 18 years' age to provide independent consent for personal data processing, except the cases of emancipation of juveniles, provided for by laws of states. The 18 age limit will contribute to establishing of additional guarantees regarding the limitation and control of children access to websites, which contains information of a sexual or violent nature, by parents. Information society service is any paid or free service, which is provided remotely via electronic means and upon individual request. Depending on the type (content) provided services should be classified into: 1. services, provided with verification of the person registering; 2. services, that do not require verification of the person registering. Such cooperation of protective measures regarding the realization of the right of access to the Internet and the right for personal data protection will provide an effective mechanism for their realization taking into account network threats.

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THE NEED FOR SPECIFIC APPROACH TOWARDS INFORMING MEMBERS OF MARGINALISED GROUPS OF THEIR RIGHTS: PRACTITIONER'S REFLECTIONS

Key words: *Raising awareness, information campaigns, marginalized groups, conventional rights.*

A famous maxim of human rights philosophy is that we are all somehow a minority. The entire idea of human rights is largely about protection of particular minorities from despotism of an abstract and undefined majority. While the rights of «average» members of the «majority» are well-defined in the practice of the European Court of Human Rights (hereinafter ECtHR), the specific rights of minority groups attract greater attention of the Strasbourg jurisprudence. According to Al Tamimi [1], between 1959 and 1999 there were 16 ECtHR judgements concerning specific rights of vulnerable minority groups, compared to 80 in 2011, 82 in 2012 and 70 in 2013. Such cases are now making about 7% of Court's jurisprudence, and it appears that these numbers are on the increase.

The notion of «vulnerable group» was first introduced in *Chapman v. the United Kingdom* [2], where the Court found that special consideration must be given to the needs of the Roma community due to their special lifestyle. Since then, the concept of vulnerability is being developed both in the scholarly works and in practice [7].

The United Nations uses a similar concept of marginalised groups. Here the author joins the opinion of Maina Kiai, the UN Special Rapporteur on the rights to freedom of peaceful assembly and association, in her observation that the term «marginalised» is preferable, as the word «vulnerable» points at helplessness and victimhood, while the term «marginalised» means personal situation created by actions of omissions by States and non-State actors. Members of marginalised groups are pressed into certain conditions by actions of the others, and this term is more accurate to description of situation of individuals who became marginalised because of external