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CORRELATION BETWEEN THE PRINCIPLES OF PUBLICITY OF CONSTITUTIONAL COURT DECISIONS AND PERSONAL DATA PROTECTION (CASE STUDY OF GEORGIAN CONSTITUTIONAL COURT)

Presented paper concerns to the issue of proper perception of the state in establishing the distinction between personal data protection and principles of publicity. The idea that the information protected by public institutions is a public good is nowadays reinforced by domestic and international legal documents.

The aim of the research is to study abovementioned issue in regard with the practice of Georgian Constitutional Court and based on the results, to define the main problems identifying the main line between personal data and principles of publicity.

According to case study, it's clear that individuals are not aware how they can protect their personal data. Data processing organizations themselves violate the requirements of Georgian Law on Personal Data Protection. Current judicial practice makes it possible to believe that violations of abovementioned rights will not only decrease, but will define the proper line between personal data protection and Publicity principles concerning court decisions.

Keywords: Personal Data; Principles of Publicity; Freedom of Information; Georgian Constitutional Court.

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Співвідношення принципів гласності рішень Конституційного Суду і захист персональних даних (практика Конституційного Суду Грузії)

Розглянуто проблему належного сприйняття державою встановлення меж між захистом персональних даних та принципами гласності. Ідея про те, що інформація, захищувана державними установами, є суспільним благом, нині підкріплюється внутрішніми і міжнародними правовими документами.

Мета статті – висвітлити вищезазначене питання на підставі практики Конституційного Суду Грузії й на основі отриманих результатів окреслити основні проблеми щодо встановлення межі між захистом персональних даних та свободою інформації.

Виявлено, що люди не знають, як вони можуть захистити свої особисті дані. Самі організації, що обробляють такі дані, часто порушують вимоги закону Грузії про захист персональних даних. Вивчення судової практики дає підстави припустити, що з часом кількість порушень права на захист персональних даних буде зменшуватися, а судові рішення допоможуть установити необхідну межу між принципом гласності і захистом персональних даних.

Ключові слова: персональні дані; принципи гласності; свобода інформації; Конституційний Суд Грузії.

1. Introduction. Decades earlier world has recognized proportional link between the universal transparency of public institutions and the borders of democracy. The idea that the information protected by public institutions is a public good is nowadays reinforced by domestic and international legal documents.

Within the adoption of General Administrative Code, Georgia has made a significant step towards implementing freedom of information, but the problem still arises when it somehow impeded by the right to personal data protection.

In the comprehensive list of human rights, the right to protection of personal data holds a special place. According to Constitution of Georgia personal data about him/her will be protected and will not be disclosed without the consent of the data subject. However, in many cases this constitutional right has been violated. The question is: where is the line between personal data protection and the public interests? When and how should be preference determined between personal data protection and freedom of information, including the publicity of court decisions.

Besides Constitution (Constitution of Georgia, 1995: article 17), according to Criminal Procedure and also Civil Procedure Code of Georgia, attendance at the court session is free (Criminal Procedure Code of Georgia, 1998: article 182; Civil Procedure Code of Georgia, 1997: article 9), moreover, the media can broadcast the trial live. Despite abovementioned the exception is when a person appeals official to retract the court decision and the personal data is identified (Center for Law and Democracy, 2017). With the purpose of determining a balance between freedom of information and personal data protection, substantial damage was caused to the freedom of information.

According to Constitution every individual have the right to protect their rights; therefore the state is restricted by the fundamental rights and freedoms of the human being, the power of the authorities ultimately serves the full and adequate implementation of the Constitution, which is the constitutional obligation of the government (Eremadze, 2013: 81). The legal restriction of freedom of information is permissible, only the limits of its restriction, or the protected good, must be of public importance. This is confirmed by the absolute nature of freedom of information as a constitutional right.

2. Practice of Constitutional Court of Georgia considering the freedom of information. The practice of Constitutional Court of Georgia considering freedom of information is not diverse, but it's the main focus of Constitutional Court's case-law (Georgian Young Lawyers' Association, 2011: 22). The Constitution of Georgia acknowledges this right as an integral part of its body and as a guarantee of democracy. "The purpose of the constitution is to ensure the free exchange of information in a democratic society" (Constitutional Court Decision N2/2-389, 26/10/2007, paragraph 16). Constitutional Court in one of its decisions (Constitutional Court Decree No. 2/3/406, 30/10/2008, paragraph 10), once again underlined the importance of freedom of information and exhaustively defined the goodness that it will bring to the public in its timely manner. "Constitution of Georgia grants the attention to freedom of information and devotes much attention to it. Without the freedom of information it is impossible to ensure a vital discussion of the freedom of expression and free society and the process of tactical opinions. For the purpose of forming the idea, it is necessary to obtain information, freedom of dissemination of information, to ensure that the author comes from the author to the addressee. In addition to public liability, freedom of information is of great importance for the personal and intellectual development of individuals" (Constitutional Court Decree No. 2/3/406, 30/10/2008, paragraph 10).

The first case, which was discussed by Constitutional Court on freedom of information, was "Georgian Young Lawyers Association and Citizen Rusudan Tabatadze v. Parliament of Georgia". In the present case, Constitutional Court of Georgia explained the exercise of the right guaranteed by Article 24 of Georgian Constitution acting at that time (Constitution of Georgia, 1995: article 17), "depending on the activity of the authorized entity itself, the State, in this case,

only obliges to prevent the person from receiving information, expressing his opinion and restricting the mass media through censorship (Constitutional Court Decision N2/2-389, 26/10/2007, paragraph 6). Constitutional Court, later, in the case "Citizen of Georgia Maia Natadze and others against the Parliament of Georgia and the President of Georgia" has significantly determined the importance of Article 24 of the Protection of Freedom of Information, In particular, Article 24 of the Constitution preserves the freedom of information, its free dissemination and reception from universally accessible sources, information carriers that are useful for obtaining and disseminating information. This is a norm that prohibits the public from setting up an information filter for human minds, which is characteristic of non-democratic regimes (Constitutional Court Decision N2/2-389, 26/10/2007, paragraph 14).

In accordance with all the abovementioned, Constitutional Court of Georgia protects the right of a person to obtain information from private sources, as well as dissemination of information through any legal means available to him.

The state is prohibited to regulate the information market, except for the cases and means provided by the constitution (Georgian young Lawyers' Association, 2011: 25). The provision of Article 41 of the Constitution of Georgia in connection with Article 24, Constitutional Court defined in the case "The Public Defender of Georgia and the Georgian Young Lawyers' Association Against the Parliament of Georgia", in particular, Article 41 of the Constitution of Georgia, unlike Article 24 of the Constitution of Georgia, does not regulate obtaining information from universally accessible sources. State institutions are not such sources. The information in the state institutions and official records is placed according to Article 41 of the Constitution of Georgia (Constitutional Court Decree No. 2/3/406, 30/10/2008, paragraph 11). The constitutional-legal regime of availability of this information, of course, differs from the source of information available from the sources of universally available information" (Constitutional Court Decree No. 2/3/406, 30/10/2008, paragraph 11). Paragraph 1 of this Article protects the specific case of freedom of information - the right to receive information from official sources (Constitutional Court Decree No. 2/3/406, 30/10/2008, paragraph 13). It is important for the full implementation of any right to the State to act as a positive and negative obligation to ensure that the enjoyment of the right of human beings is not fragmented and has its basic purpose, which implements the content of each right (Georgian Young Lawyers' Association, 2011: 28). Consequently, in each particular case, it is up to the extent to which the authorities interfere with the freedom of expression (Constitutional Court Decree N2/3/359, 06/06/2006, paragraph 1. Constitutional Court Decision No. 2/3/364, 14/07/2006, paragraph 1).

Acceptance of information is part of the right to freedom of expression. Subjects of freedom of expression are physical and legal entities (Kublashvili, 2014: 81). The State has a positive obligation to not interfere with the realization of the constitutional right issues, which are guaranteed by the Constitution of Georgia (Gotsiridze, 2007: 292.). It is similar to the right to free development of

person: people can't develop if it is not allowed to express their opinions freely and uninterruptedly (Kublashvili, 2014: 82). Constitutional Court of Georgia in one of his decisions has stated that the restriction of freedom of expression can only be restricted in the cases provided by the Constitution, the lawful restriction of freedom of expression is permissible, only the limits of its restriction, or the protected quality, must be of public importance. This is confirmed by the freedom of expression, as a constitutional right, not an absolute character (Constitutional Court Decree No. 1/1/468, 11/04/2012, paragraph 26). Freedom of expression is the basis of a democratic state (Commentary of the Constitution of Georgia, 2013: 255), which includes not only expressions of pleasurable views for third parties, but also irresponsible, spontaneous, acute and polemical expressions (Jorbenadze, Macharadze, Bakhtadze, 2014: 83), which should not go beyond the court and is one of the guarantees of a democratic state (Jorbenadze et all, 2014: 83). On the basis of this, it will be possible to fix relevant positions on various issues in the state, to publicize its interests on the basis of human will (Commentary of the Constitution of Georgia, 2013: 256).

Realization of freedom of expression relates to receiving and disseminating relevant information. Freedom of thought is a source of information, and the freedom of information is a contributing factor in the development of opinions (Commentary of the Constitution of Georgia, 2013: 260). Any person who has a desire to get acquainted with the current events in the country has the right to get information passively, such as newspaper, internet and others (Kublashvili, 2014: 83). The problem of freedom of information is quite relevant, in terms of legislative regulation of information in Georgia, the national legislative base is scarce. The secrecy of the information must be carried out within the framework of "moderation" and the secrecy of the information should be marginalized as freedom of information is a prerequisite of free living in order to ensure the protection of human rights and freedoms not only by the legislation of Georgia but also by the international standards and to improve their protection.

The Constitution of Georgia and international acts establish the obligation of the State to ensure the right to freedom of information. The mechanisms of assurance are limited by the obligation to create effective mechanisms. Freedom of information is a manifestation of the principles of democratic and legal state. The right to access to information protected in the official documents of the State guarantees effective participation of citizens in the implementation of the government, which is the principle of the principle of democratic and legal state (Constitutional Court Decree N1/4/757, 27/03/2017, Paragraph 4).

The purpose of the legislation is to maintain transparency in the activities of public institutions, which can't be hindered by the bureaucratic, legally groundless opinions and attitudes, because of freedom of information, democratic society and the importance of state interference.

There are two types of freedom of information: freedom of passive information and freedom of active information. Freedom of passive information includes

searching, obtaining and receiving information, and freedom of active information means transmitting and distributing information.

Freedom of information is related to the freedom of the person and represents the prerequisite of expression. Public access to information protected in government institutions is one of the modern methods of binding the government. The public institution is obliged to issue the information as soon as the information is requested (The Decision of the Supreme Court of Georgia, NB-1410-1374 (K10), 19/04/2011).

Georgia has been facing great challenges for centuries. The Opinion Struggle was held to determine a balance between freedom of information and personal data protection. The process of defining the boundary of the damage caused to the freedom of information, especially on the activities of the Court, since that courts ensure the visibility, and thus a substantial effect on the freedom of information and open government practices, such a practice exists in anguish, in the United States. However, the Georgian judicial practice has been substantially changed since 2013 in terms of publicity and publicity of information. Today we are confronting the sad reality in the country, because the personal data protection is the advantage. Thus, the constitutional order of the state of law is violated, and the first thing civil society in the country and democracy of the state itself is questionable.

Constitutional Courts' Decision announced on 7th of June 2019 (Constitutional Court Decree N1/4/693) is unprecedented one. The issue concerned whether Article 44 (1) of the General Administrative Code of Georgia and Article 6 (3) of the Law on Personal Data Protection is relevant and constitutional in accordance with Article 41(1) of the Constitution of Georgia; also relevance of articles 28 (1) and 44 (1) of the General Administrative Code of Georgia, articles 5 and 6(1), 6(3) of law on Personal Data Protection to article 41(1) of Constitution of Georgia.

Constitutional Court has recognized article 28(1) and Article 44(1), of the General Administrative Code of Georgia, article 5 and article 6(1), 6 (3) of the Law on Personal Data Protection unconstitutional. According to abovementioned articles it's forbidden to make official acts public adopted by Court on public sessions. This statement is incompatible with Article 18 (2) of the Constitution of Georgia. With made decision, the priority was granted to the freedom of information in relation to personal data protection. The right of information in international law is protected by one of the basic human rights – freedom of expression. Through progressive interpretation, the right to information was understood as an international guarantee of freedom of expression.

One of the main characteristics of Freedom of expression is open access to information, which is vital for people's participation in implementing the authority (The OSCE, 2013). The information, if not mentioned, is of personal character, there is no necessity to establish a balance between freedom of expression and the inviolability of private life. Instead, preference is given to the freedom of expression.

The United States is the country with the highest standard of transparency in the judiciary system, even though the US Constitution does not contain a record that would specifically guarantee access to documents that has been confirmed by the

first amendment of the constitution, the right is concerned. Realization of freedom of expression relates to receiving and disseminating relevant information. Freedom of thought is a source of information, and the freedom of information is a contributing factor in the development of opinions. Any person who has a desire to get acquainted with the current events in the country has the right to get information passively, such as newspaper, internet and others (Jorbenadze et all, 2014: 83).

3. Conclusion. As the research has shown, very often the freedom of information violates the right to personal data protection. On the other hand, it's a paradox, but there are cases when freedom of information is restricted on the basis of a very high degree of personal data protection. The existence of this problem is due to insufficient degree of determination of the content of these rights by States themselves. It's clear that states misunderstood the notion of publicity principle and sometimes fail to prioritize it agains personal data protection.

As time progresses more significant development of judicial practice will contribute to establishing a proper perception of the state in establishing the distinction between abovementioned rights. The Georgian judicial practice has been substantially changed since 2013 in terms of publicity and freedom of information.

The reality is that there is no legislation in Georgia on "Freedom of Information", that would have changed the hard practice that is currently experienced; the right to access information would be regulated and would not have been restricted or completely infringed.

Freedom of information, as recognized by the Constitution of Georgia is of vital importance and represents the highest guarantee of transparency. Consequently, the violation of the rights guaranteed by the supreme law of the country is related to the dignity of the person. Human dignity is expressed in adequate protection and full implementation.

According to case study, its clear that individuals are not aware what their rights are and how they can protect their personal data. Data processing organizations themselves violate the requirements of Georgian Law on Personal Data Protection. Current judicial practice makes it possible to believe that violations of abovementioned rights will not only decrease, but will define the proper line between personal data protection and Publicity principles concerning court decisions.

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Соотношение принципов гласности решений Конституционного Суда и защита персональных данных (практика Конституционного Суда Грузии)

Рассматривается проблема надлежащего восприятия государством установления границ между защитой персональных данных и принципами гласности. Идея о том, что информация, которую защищают государственные учреждения, является общественным благом, сейчас подкрепляется внутренними и международными правовыми документами.

Цель публикации – осветить вышеупомянутый вопрос с точки зрения практики Конституционного Суда Грузии и на основе полученных результатов выявить основные проблемы установления границы между защитой персональных данных и свободой информации.

Констатируется, что люди не знают, как они могут защитить свои личные данные. Сами организации, обрабатывающие такие данные, часто нарушают требования закона Грузии о защите персональных данных. Изучение судебной практики дает основания предположить, что со временем количество нарушений права на защиту персональных данных будет уменьшаться, а судебные решения помогут установить требуемые границы между принципом гласности и защитой персональных данных.

Ключевые слова: персональные данные; принципы гласности; свобода информации; Конституционный суд Грузии.

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