

INSTRUCTION
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ON
"PROCESSING AND PUBLICATION OF PERSONAL DATA IN JUDICIAL SECTOR"

Pursuant to letter "c", clause 1, of article 30 and letter "f", clause 1 of article 31 of the Law No 9887, dated 10.03. 2008 "On Protection of Personal Data", the Commissioner for the Protection of Personal Data", hereby

INSTRUCTS

CHAPTER I
OBJECT

1. This Instruction establishes the main principles ruling the processing of personal data in the judicial sector, the measures to be taken for the security of personal data during and after processing, as well as their publication.

CHAPTER II
GENERAL RULES

1. According to the law on protection of personal data, the Courts are data controllers, since they hold, process, manage, publish, archive and on such grounds they control personal data.

2. The lawful processing of personal data is done while observing and guaranteeing human rights and fundamental freedoms and, in particular, the right to protect private life.

3. While processing the data in the judicial system, it is important to observe the principles of legitimacy, proportionality and the purpose of their collection. Personal data can be collected only for specific, explicit and legitimate purposes while performing the tasks thereof, and are processed only for the same purpose for which such data were collected.

4. The judicial system shall process personal and sensitive data in compliance with the legal requirements of processing of personal data as provided under letters "c", "ç", "d" and "dh", of paragraph 1, Article 6, and under letter "b" and "c" of paragraph 2, article 7 of the law on protection of personal data.

5. Any person, claiming violation of his/her rights, freedoms and legal interests related to his/her personal data during their processing, has the right to complain, or, to notify the Commissioner and demand the Commissioner's intervention to remedy such violation.

6. Any person who has suffered damage, as a result of unlawful processing and publication of his/her personal data is entitled to demand from the controller compensation for the damage suffered.

¹ The translation was commissioned by the EU funded Project "Strengthening of the Data Protection Commissioner office in Albania, for alignment with EU standards"

7. The terms used in this instruction take the same meaning as defined under the Law on protection of personal data.

CHAPTER III SECURITY MEASURES FOR PERSONAL DATA AND CONFIDENTIALITY

1. The Court administration shall take adequate organizational and technical measures to protect personal data against accidental or unlawful destruction, accidental loss, to protect the access or disclosure by the unauthorized persons, especially when data processing is done on the network, and any other form of illegal processing.

2. Processing and publication of personal data by the court administration is carried out in particularity in compliance with the following security measures:

a) to deny the access to unauthorized persons in the data processing equipment used for processing of personal data (access to the control equipment);

b) to prevent unauthorized reading, copying, modification or removal of data;

c) to prevent unauthorized discard of data and the unauthorized inspection, modification or deletion of stored personal data;

ç) to record and document any modification, rectification, deletion, and transmission;

d) to prevent the use of automatic data-processing systems by unauthorized persons;

dh) to ensure that persons who are authorized to use an automatic (electronic) data-processing system for the processing of data, have access only to the data covered by their access authorisation;

e) to ensure that it is possible to verify and establish to which bodies personal data have been or may be transmitted or made available using data communication tools;

ë) to ensure that it is possible to fully verify and establish which personal data have been entered into automated data-processing systems and when and by whom the data were entered;

f) to prevent unauthorised reading, copying, modification, rectification or deletion of personal data during transfers thereof or during transportation of court files;

g) to ensure that the systems installed, in case of interruption, may be restored;

h) to ensure that, the system performs correctly, the appearance of faults in the functions is reported and the data stored cannot be corrupted by means of a malfunctioning of the system.

3. The level of security should be appropriate to the nature of personal data processing.

4. The personal data documentation are retained for as long as it is deemed necessary to reach the purpose for which they were collected.

5. The employees of judicial system and other persons, who come to know the content of the data processed while exercising their tasks, are bound to the duty of confidentiality and credibility even after termination of their function. These data shall not be disclosed, unless otherwise provided by law. The breach of confidentiality obligation constitutes a criminal offense prescribed by the Penal Code (Article 123).

CHAPTER IV PUBLICATION OF PERSONAL DATA

1. The personal or sensitive data included in a court decision, are made public provided that such publication does not prejudice legitimate interests of the data subjects.

2. The personal data subject has to be informed about his data which are to be published on the official website, under this Instruction, with initials or encrypted in order to make him/her unidentified.

3. Before the publication and making them available to the public, the persons in charge shall take care to ensure that personal data contained in court decisions are accurate and complete. In case it is ascertained that personal data contained in any unpublished court decision, are inaccurate or incomplete, the person in charge shall consult with the Judge of the case for the rectification or erasure thereof. Following such consultation, the rectification, erasure or blocking shall be carried out in compliance with the Law on protection of personal data.

4. The persons in charge, during the publication of criminal decisions, civil decisions (which are given upon lawsuit) on the official website, are obliged to apply the following rules, for the protection of privacy:

a) The names and surnames of the parties, third parties, witnesses and experts called in the trial are inserted with initials or are encrypted;

b) In the reasoning part of the decision, the publication of personal data which prejudice the privacy of the parties at trial (such as: address, plate number, telephone number or any other element which makes the data subject identifiable) is prohibited..

5. While publishing civil decisions related to commercial issues, the personal details of the parties/ shareholders are given in initials or encrypted, while the publication of percentage of the stocks/shares possessed by the parties, bank account numbers, monetary amounts (values) and trade secrets is prohibited.

6. While publishing civil decisions related to family issues, the personal details of the litigant parties are given in initials or encrypted, while, the publication of circumstances, which prejudice the dignity and privacy thereof or of other persons associated with the court case, and the records on the child's opinion, on the obligation for feed, on the meetings of the minors with the parents, the time and place of the meeting, the psychologist's report, is prohibited.

7. In all cases when the parties at trial are minors, the publication of personal details and of other identifiable (personal) data, or of the data related to third parties, from which the identity of the minor is revealed, even though indirectly, is prohibited.

8. Access to the full version of the court decision published on the official website is allowed only to the persons have a legitimate interest therein.

9. The physical copy of the court decision is given only to interested persons who have a legitimate interest with the judicial case.

10. In the event the final binding court decisions are used for scientific, statistical, literature or journalistic purposes, for the processing of the data contained in such decisions, the requirements of article 10 and 11 of the law No. 9887, dated 10.03.2008 "On Protection of Personal Data" are applicable.

CHAPTER V FINAL PROVISIONS

1. The controller/its management shall assign the person/ persons in charge, referred in Chapter IV of this instruction, and the respective duties thereof pursuant to this Chapter.

2. Non-application of the requirements of this instruction consists in an infringement of personal data protection law, and is sanctioned under article 39 of that Law.

3. All the respective structures of the controller within the territory of the Republic of Albania are in charge for the implementation of the Instruction herein.

This instruction enters into force six months after its publication in the Official Gazette.

COMMISSIONER
Flora Çabej (Pogaçe)