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Implementation of the right to privacy in the Republic of Kosovo

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Abstract---The right to privacy, as one of the fundamental human rights, derives from the Constitution of the Republic of Kosovo (RKS, 2008, Chapter II, Article 36, p. 11) and is enforced through the Law on Personal Data Protection, based on whose independent authority that has been established to oversee the implementation of this law in the public as well the private Sector. During the eight-year period, since the authority that takes care of the respect of citizens' privacy by controllers of personal data from the public and private sector, has been established, the current situation suggests that much more work needs to be done in order to establish a steady trust by citizens and their data's to be considered safe. This paper will present the current state of respect for the privacy rights and the challenges of the relevant authority, being limited mainly in the last decade, despite the fact that the mandated authority to oversee the implementation of rules covering this area has been established only eight years ago (2011, Decision). As per methods case-by-case analysis, which will precise the analyzed data, provided by official written and electronic open sources, and in order to highlight a more realistic picture of what has been done specifically in this field by the competent authority and to ensure the implementation of the right to privacy in the Republic of

Kosovo. As a result of the elaboration of this topic, recommendations will be addressed to the Agency for Information and Privacy rights, as an independent institution transformed during 2019 by the State Agency for Personal Data Protection, after the amendment of the Law on Personal Data Protection in order to be in compliance with the relevant European legislation.

Keywords---right to privacy, constitution, personal data, legal norms, state agency.

Introduction

The right to protection of personal data, as part of the right to privacy, is a fundamental right in the frame of human rights. The State Agency for Personal Data Protection in the Republic of Kosovo is the authority that implements this law, supervising the legality of the processing of citizens' data. This authority was established on 2010 within the Law on Personal Data Protection, which law among other things, had foreseen the establishment of a supervisory authority for the processing of personal data. In March 2019, the Assembly of the Republic of Kosovo approved the Law No. 06 / L-082 on Personal Data Protection, according to which law this authority is transformed from the State Agency for Personal Data Protection into the Agency for Personal Data Protection. The area covered by this authority is also provided by Article 23 of the Constitution of the Republic of Kosovo, which law guarantees the right of citizens to privacy.

Based on the poor situation in the field of personal data protection and the need for law enforcement, the Agency is expeditiously shaping and functionalizing it in order to perform tasks and obligations deriving from this law. Citizens' knowledge about their right to privacy is relatively poor' (Arifi, 2017). Such a statement, six years after the establishment of the authority that oversees the observance of respect for the privacy of citizens, the late establishment of the aforementioned institution has resulted in shortcomings in informing and raising awareness of citizens about their rights in privacy guaranteed by law. In the current circumstances, during the research on the authority mandated to protect privacy in the Republic of Kosovo, the Agency for Information and Privacy, has only nineteen employees (AIP, 2019).

In the first five years after its establishment, this authority was led by a collegial body called the Council of the Agency, the same, after the enforcement of the new law on personal data protection, is expected to be led by a commissioner, a model practiced by the authorities of the member states of the European Union. Until the drafting of this paper, the Assembly of the Republic of Kosovo hasn't managed yet to select the head of this important institution even after more than three years of absence.

Summary

The fact that one day, the individual will enjoy protection for himself and his property has to do with the principle that is as old as customary law; but over

time it is becoming necessary to redefine the exact nature and extent of that protection '(Warren & Brandeis, 1890). This paraphrase serves more to illustrate the mentality of people with early democracies and advanced legislation, which, normally, should serve us, as representatives of countries with fragile democracies, where the right to privacy is still new and not sufficiently implemented and continues to be seen as a 'luxury' within human rights. Violation of privacy is a growing concern in the Republic of Kosovo. This comes as a reflection of the rapid development of information technology, internet, search platforms, social networks, etc. As a result of this development, the protection of personal data is becoming increasingly challenging. The official reporting of the authority mandated to oversee the implementation of the law guaranteeing privacy for citizens, as a general assessment underlines the fact that in some public and private bodies there is a tendency to exceed the amount of data collected and storage time (NAPDP, 2014, Annual Report)

In the second half of the fourth year of operation of this independent authority, the European Commission's Progress Report on Kosovo, *inter alia*, emphasizes that a more proactive approach by the Agency and the Government is needed to ensure the appointment of officials for dataprotection across municipalities (EC, 2015). From the same source, it is recommended that sufficient human and financial resources should be provided to the Personal Data Protection Agency in order that agency will proactively address new challenges, in particular data security issues, and ensure implementation of relevant measures (*ibid*, 2015).

Meanwhile, a few months later, the Agency has informed the public that from year to year has taken care of building its capacity, both in terms of staffing, as well as in terms of training staff for the implementation of the Law on personal Data Protection, which has resulted that this year the activities of the Agency have increased in terms of both quantity and quality (NAPDP, 2016). 'Today, complaints addressed to the agency on a daily basis speak of a marked improvement in civic awareness in this area, which, however insignificant it may seem to someone, privacy is in fact a basic requirement of life, such as breathing. eating (Arifi, 2019) '. After the transformation of this institution from NAPDP to AIP, its mandate has been extended as well the authority has been strengthened, now having the right to impose monetary fines for data controllers in both public and private sector, in case of violations.

At this stage, privacy and the right to information are often described as two sides of the same coin, which in fact, rather act as two complementary rights that promote the individual's right to self-defense and to promote the accountability of institutions. state (Arifi, 2019). The positive development trend of this authority is also expressed in the reflections of the official attitudes of the managerial level of the Agency. Among other things, the statement that the frequent addresses of citizens in the Agency make them believe that people here have never been more aware of their rights in this segment, and they can expect from the businesses and organizations to whom they believe their personal data (Arifi, 2018).

Among the activities of this authority that has left traces in the installation of a mentality in the form of tradition to certain categories of citizens is precisely the celebration of International Privacy Day, which in Kosovo is reflected in a variety

of activities, mainly of an awareness campaign. The lectures that take place on January 28 of each year in high schools, have raised the level of knowledge among the younger generations about privacy breaches that have the potential to bring the great use of information technology, especially about social networks. To reinforce this perception I am referring to a letter of the leader of the awareness campaigns from this authority, who, among other things, about three years ago, stated that in our country, the authority, which deals directly with the protection of the right of citizens for privacy, is relatively young comparing to other states. However, from the impartial perception of people addressing their concerns to this authority is being described as quite productive (Arifi, 2017).

Objectives of the Information and Privacy Agency

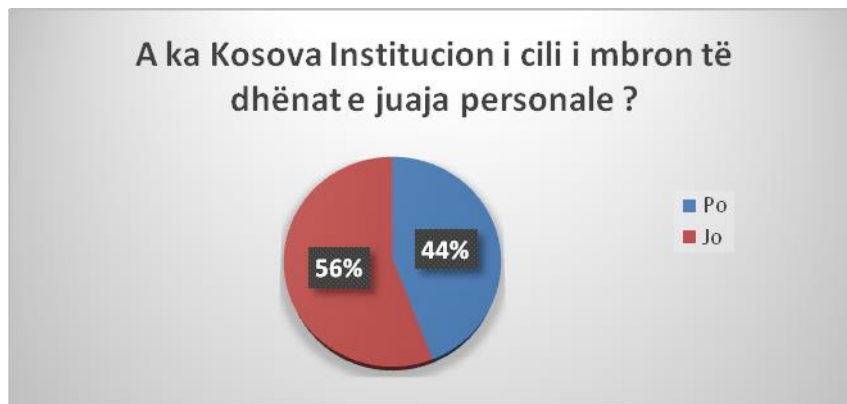
The State Agency for Personal Data Protection is an independent state institution, established on the basis of Law no. 03 / L-172, on the Protection of Personal Data and is responsible for overseeing the legitimacy of the processing of personal data. The same institution was transformed into the Information and Privacy Agency, on the occasion of the entry into force of Law no. 06 / L-082 on Personal Data Protection in March 2019 (Pirc-Musar, 2015). The essential goal of this authority is to create a sustainable perception among citizens that their rights to privacy and access to public documents are guaranteed and that they are realized through the effective oversight of this agency over public institutions and the private sector as well.

The main mechanism through which this authority should extend its influence to data controllers (2019, 06 / L-082), which is the process of inspection of control entities (2019, 06 / L-082), It is currently not functional, due to the lack of the head of this institution, who is expected to sign the internal acts of the authority, which derive from the Law on Personal Data Protection. The objectives set in each annual plan drafted by this institution include the development of information and awareness campaigns for citizens about their rights, as well as the launch of awareness-raising projects dedicated to data controllers, respectively public institutions and private sector that processes citizens personal data.

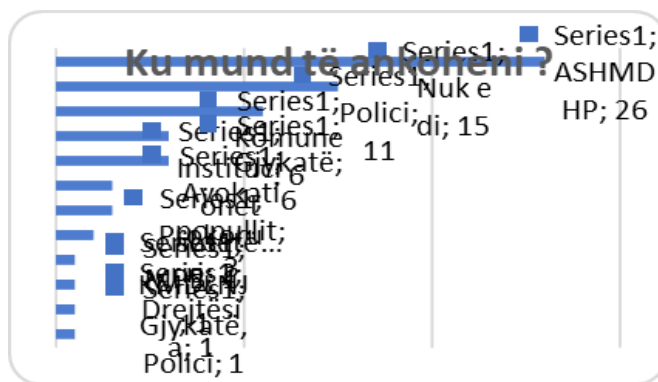
Overcoming this unenviable situation for the responsible authority could be done by accelerating and depoliticizing the process of recruiting the position of commissioner, as head of the Information and Privacy Agency. She / he would then sign all internal legal acts, which would enable the full functioning of the authority and would enable the legality of the application of concrete mechanisms for overseeing the implementation of the law on personal data protection.

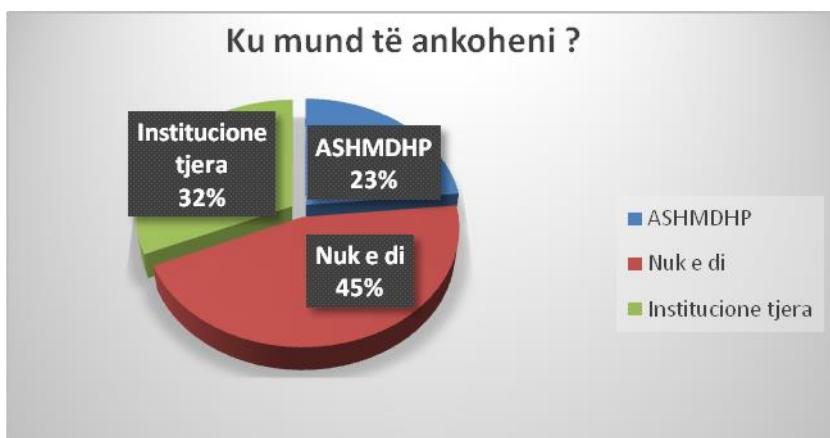
Research Analysis for the Privacy Protection Authority

Does Kosovo have an institution that protects your personal data?

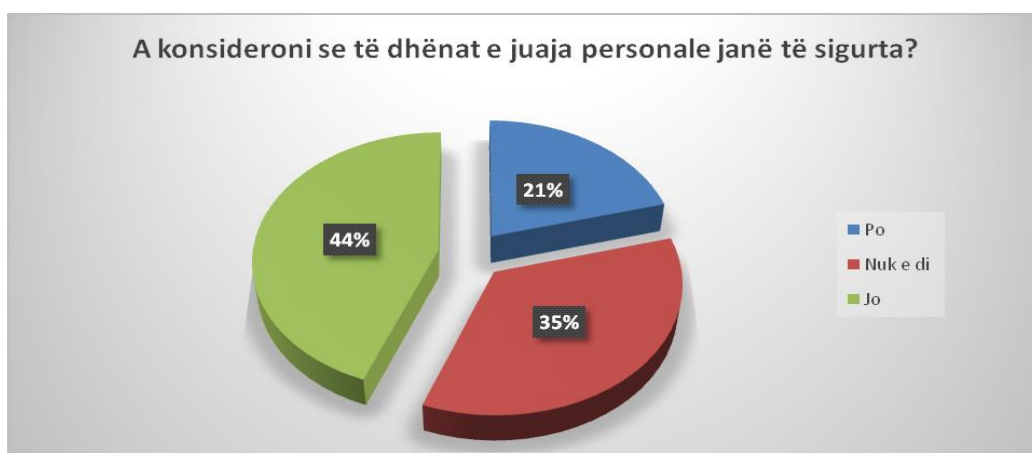


Where do you think you can complain if you consider that your data is being misused?





Do you consider your personal data to be secure?



In the survey (NAPDP, 2015) conducted on the occasion of marking the 4th anniversary of the establishment of the State Agency for Personal Data Protection, in order to obtain knowledge about how much citizens are informed about their rights to personal data privacy, the results of the survey when asked if there is an authority in Kosovo that protects personal data, 56% of respondents answered that they do not know, while 44% of them stated that they are aware of the existence of this authority. From the percentage of those who are informed about the Agency, were a total of 38 %, while 22 of respondents thought that the institution responsible for this issue in Kosovo was the Ministry of Justice the Municipality, or any other governmental institution.

The survey method was conducted with random respondents. A specific focus group was not selected because the aim was to measure the level of knowledge of citizens in general, regardless of age, gender or profession, how much they were informed about their rights to personal data, privacy and existence. of an institution, such as the State Agency for Personal Data Protection of that time. The survey was conducted with the qualitative method, as only 150 respondents were surveyed, with only three questions, from which it was intended to obtain a

rough overview of basic knowledge on the right to privacy, personal data and mandated authority in this area.

Due to the circumstances caused by the end of the first five-year term of the five supervisors mandated by the Assembly of the Republic of Kosovo in 2011, the development of this institution has marked a stalemate, in the impossibility of conducting field inspections. Consequently, the controlling entities from the public and private sector, have not felt the hand of the state, through this authority, which, through inspections would force them to implement the relevant law and consequently prevent the violation or eventual misuse of personal data.

Budget and Deadlines

In order to carry out its mission and to fully implement the mandate given by law, AIP must have a steadily increasing budget upon the adoption of the Budget Law by the Assembly each year, so the drafted projects will not be jeopardized, as well the annual work plan for achieving the objectives set out in its strategic documents. The amount envisaged to be spent on the Agency's projects during the next two years (2020-2022) through the Twinning Project amounts to € 2 million, which will alleviate the existing budget gap that has followed this authority since its establishment. The Agency for Information and Privacy, for the fiscal year 2019, had the initial budget allocated according to the Law on Budget in the amount of € 365,203.00, which, based on the request of the Minister of Finance, the budget was reduced and finally the final budget of the Agency for 2019 has been € 258,779.25.

Recommendation

A critical look at the overview of the process of analyzing and synthesizing the issue under investigation sheds light on the causes of the current situation within the mandated authority to ensure that the privacy of citizens is being respected. Political circumstances turn out to have been the main cause of the protracted development processes within the authority, the complete non-functioning of which has made the controllers of personal data in the public and private sector not to feel obliged to respect the right to privacy of citizens at a satisfactory level. Given the circumstances, in the capacity of the author of this academic paper, I present the following recommendations for the Information and Privacy Agency, the Assembly of the Republic of Kosovo and the European Union Office in Kosovo.

- The Agency for Information and Privacy is recommended to conduct the recruitment of staff allowed by the Ministry of Finance, in order to fully function the internal segments of the authority to serve citizens in advising, answering their questions or complaints related to their rights;
- It is recommended that the Assembly of the Republic of Kosovo change the procedures for the selection of the Commissioner of the Agency for Information and Privacy, engaging impartial expertise in the interview phase of responsible candidates, to prevent political influence on the evaluation of candidates by members of the Parliamentary Committee on Security;
- It is recommended that the European Union Office in Kosovo accelerate the start of the implementation of the Twinning Project (EUOK, 2019), already

approved, with the implementers within the Consortium between Germany and Latvia, who were declared winners during September 2019, in order to transfer the expertise of the respective EU member states to the Agency for Information and Privacy in the field of privacy.

Conclusion

Citizens' fluctuating confidence in the security of their personal data is closely linked to the performance of the mandated authority for personal data protection, whose credibility has been significantly damaged in the last three years in the absence of the holder and inability to develop of inspections. In order to restore the trust of citizens in state institutions and in fulfillment of legal obligations, the recommendations addressed to the Assembly of the Republic of Kosovo, should be considered very seriously and, as such, carefully implemented to be initially selected, in the quality of the incumbent, a commissioner with experience in the relevant field, a man with a clean, unpoliticized past and high moral integrity.

Such a long-term vision would improve the current state of personal data processing by the public and private sector, by strictly implementing the provisions of the Law on Personal Data Protection, respectively, respecting in practice the right to privacy of every citizen. Despite the efforts of existing staff, consisted of public officials within the Information and Privacy Agency, in providing legal opinions on issues related to personal data protection and harmonizing their legislation with the special law governing this area for state institutions , then in the launch of awareness campaigns for citizens and awareness campaigns for controlling entities, not leaving aside the periodic offering of trainings for officials of public institutions and private companies, the full functioning of this authority through the re-development of inspections, after an appointment of the commissioner remains issue of special importance, and at the same time a serious challenge for the Assembly of Kosovo, in the first place, and then for the privacy authority of the country.

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