



Georgian Legislation on Data Protection

Workshop on Cybercrime Legislation
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Summary



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- **No regulation for private sector**
- **Public sector**
 - A few particular provisions
 - Namely in the General Administrative Code
 - Do not fully meet European standards
 - Data protection in the Law Enforcement Area deserves special attention
- **Legislative action is needed**
 - DLPDP provides a good starting point



Current Regulations



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- **General Administrative Code**
- **Law on Electronic Communications**
- **General Criminal Code**
- **Code of Criminal Procedure**
- **Law on Operative and Search Activity**
- **Draft Law on Personal Data Protection**



Before we start...



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- **European Convention of Human Rights**
 - **Article 8. Right to respect for private and family life**
 - 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
 - 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.



Before we start...



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- **Charter of Fundamental Rights UE**
 - **Article 8. Protection of personal data**
 - 1. Everyone has the right to the protection of personal data concerning him or her.
 - 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
 - 3. Compliance with these rules shall be subject to control by an independent authority.



Before we start...



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- **Convention 108**
 - Applies to personal data processing by
 - Public and private sectors - Covers police activities
 - Principles
 - Quality of Data
 - Sensitive Data
 - Security
 - Safeguards for data subjects
 - International Transfers
 - Cooperation among the Parties



DLPPD - General Provisions



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- **Object and Purpose**
 - Narrower than Convention or Directive
 - Only protects right to privacy
 - **Covers manual files**
- **Scope**
 - **Applies both to public and private sectors**
 - No specific rules for law enforcement work
 - Full derogation for journalistic files



DLPDP - General Provisions



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- **Special categories of data**
 - General prohibition with no exceptions
 - If applicable, may hinder police work
 - **Health data are not included**
- **Structure**
 - No reason for separating rules on legitimisation, quality of data and transparency for public and private sector
 - General principles together
 - Special rules for public sector afterwards
 - Rules for sensitive data after general ones



DLPDP - General Provisions



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- **Definitions**
 - **Written consent**
 - **Confusions**
 - **Data processor - Data controller**
 - **Authorised person - Data processor**
- **Quality of data**
 - **No provisions on fairness and lawfulness**
 - **No clause on responsibility and liability**



DLPDP - General Provisions



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- **Data Processor**
 - Due diligence clause
 - *Might have an interest*
- **Data security**
 - It is not up to the data controller to adopt *legal* measures
- **Data Protection Officers**
 - Functions and task are OK
 - Clause on independence or autonomy needed



DLPDP - Public Sector



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- **Legitimation of processing**
 - **In general, provisions are aligned with European standards**
 - Separating in five articles legitimisation of collection, processing and communication is confusing and have no added value
 - Definition of processing covers all steps
 - Legitimation cannot be achieved through change of purpose
 - Notion of compatible purposes missing



DLPDP - Public Sector



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- **Public availability does not mean lawful processing by public sector**
- **Criminal investigations must be reserved to law enforcement bodies**
- **Administrative offences**
 - **Data available only for competent services or persons**
- **Qualifying communication as a different processing operation with different rules can produce inflexibility**



DLPDP - Public Sector



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- Presumed consent is not a valid legitimating ground (Art. 12(c))
- Need to balance right to request (freedom of information?) with data protection right
- Vital interest missing
- Legitimate interest of controllers missing
 - Provides flexibility
 - Proportionality test
 - Decision on who makes the test
- Relationship between General Administrative Code and DLPDP should be clarified



DLPDP - Private Sector



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- Same comment on structure as for the public sector
- Rigid formulation of purpose compatibility
- Vital interest and legitimate interest of the controller missing as in public sector
- Transfer of data to third parties (Art. 16)
 - Freedom of information for private sector?
 - If so, needs balancing with data protection in the same way as for public sector



DLPDP - Rights



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- **Information to data subjects**
 - In general, aligned with European standards
 - More derogations available in EU Directive
- **No time frame for repeating access**
 - Fee within one year
 - Cost oriented
 - No dissuasive of legitimate claims
- **No provisions on automated individual decisions**



DLPPD - Rights



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- No right to object
- **Blocking of data whilst deciding correction or deletion**
 - Measures to prevent abuse
- Regulation of indirect access
 - Meaningful only for police and national security
 - Should be avoided for general files
 - Overlapping with provisions on direct access
- Role of Data Protection Inspector in dealing with refusal of rights



CoE - Additional Protocol



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- **Transborder data flows to third countries**
 - Only if adequate level of protection
 - Possible derogations by national law:
 - Interest of the data subject
 - Legitimate prevailing interest
 - Especially important public interest
 - If adequate safeguards provided by exporter
 - In particular, through the use of appropriate contractual clauses



DLPPD - International Transfers



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- No aligned with European standards
- No mention of adequate level of data protection in the receiving country
 - This is the general provision
- DLPPD framework only covers the exceptions to the rule
- No possibility for transfers based on authorisations, i.e., through contracts



CoE - Additional Protocol



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- **Supervisory Authorities**
 - Ensuring compliance
 - Acting in complete independence
 - Hear complaints from persons
 - Investigation and intervention powers
 - Power to engage in legal and judicial proceedings
 - Decisions challenged ONLY in Court
 - Duty of cooperation among them



DLPDP - Data Protection Inspector



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- **Good regulation on functions and independence**
- **But...**
 - **Only advisory powers**
 - **No real powers of intervention**
 - **No clear**
 - If data subjects can appeal in front of the Inspector against the refusal of rights
 - If the Inspector decisions are binding for data controllers
 - **Advise on new legislation affecting data protection not included in powers**



DLPDP - Register



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- **Acceptable level of compliance**
- **But....**
 - No information on categories of persons about whom personal data are collected
 - Data about the identity and contact details of the controller must be public
 - Personal data of person in charge of data protection should not be public
 - A general contact point is enough
 - Possibility for derogations but there are not mandatory at all



DLPDP - Final Comments



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- **Framework for transitional period for existing files: Art. 32 Data Protection Directive**
- **No dispositions on:**
 - **Liability**
 - **Sanctions**
 - **Judicial remedies**
 - **Art. 10 of Convention 108 and Art. 22 of DPD could be inspiring in this matter**



Processing of Personal Data by Law Enforcement Authorities



Recommendation (87) 15



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- **Applies to**
 - Collection
 - Storage
 - Use
 - Communication
- **Of personal data**
 - **Relative to identified or identifiable persons**
 - It is not considered identifiable if it requires an unreasonable amount of time, cost and manpower
 - Can be extended to legal persons
- **For police purposes**
 - Carried out by automated means
 - Can be extended to manual files



Recommendation (87) 15



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- 1. Supervision by Independent Authority**
- 2. Regulates collection, storage and use of data**
- 3. Limits communication of data**
- 4. Establishes publicity and data subjects rights:**
 - Access, rectification and redress
- 5. Retention and updating of the data**
- 6. Security requirements**





Recommendation (87) 15



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- **Control and notification**
 - **Independent Supervisory Authority**
 - **Introduction of new technologies**
 - Advise from Authority must be obtained
 - Only if they are in line with Recommendation
 - **Notification of files**
 - Nature
 - Responsible body
 - Purpose
 - Type of data
 - Recipients of communications



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- **Collection of data**
 - Prevention of a real danger
 - Suppression of a specific criminal offence
 - Exceptions only through national law
 - Technical surveillance - other automated means
 - Should be provided for in specific provisions
- **Information**
 - Data collected without data subjects' knowledge
 - Individuals should be informed their data are stored
 - When practicable
 - Without hindering police activity



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- Special categories of data
 - It is **prohibited** the collection of data on individuals **solely on the basis** that they have a particular racial origin, particular religious convictions, sexual behaviour or political opinions or belong to particular movements or organisations which are not proscribed by law should be prohibited.
 - Collection and processing of these data is admissible only if
 - **Absolutely** necessary for a particular inquiry



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- **Storage of data**
 - As far as possible, only accurate data
 - Only those necessary for lawful tasks
 - Distinguished according degree of accuracy and reliability, in particular
 - Based on facts from
 - Based on opinions or personal assessments
 - Police files kept apart from ordinary files
- **Used only for police purposes**



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- **Communication of data**

- **Between law enforcement authorities**
 - If there is a legitimate interest within the legal framework of both bodies
- **To other public bodies, in a particular case:**
 - Clear legal obligation or authorisation
 - Especially, from the DPA
 - Indispensable to fulfil recipient own lawful tasks
 - **Exceptionally**
 - Undoubtedly in the interest of the person
 - Unambiguous consent
 - To prevent a serious and imminent danger



Recommendation (87) 15



Agencia de Protección de Datos
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- **Communication of data**
 - To private parties, **in a particular case:**
 - **Clear legal obligation or authorisation**
 - Especially, from the DPA
 - **Exceptionally**
 - Undoubtedly in the interest of the person
 - Unambiguous consent
 - To prevent a serious and imminent danger



Recommendation (87) 15



Agencia de Protección de Datos
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- **Communication of data**
 - **International transfer to other police forces**
 - Clear legal provision
 - National or international
 - To prevent a serious and imminent danger
 - Suppress a serious criminal offence
 - **Request for communication**
 - Subject to specific legal provisions
 - Provide indications
 - Requesting body or person
 - Reasons for the request
 - Objective of the request



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- **Communication of data**
 - **Conditions for communication**
 - Verify quality of data
 - Indication of accuracy and reliability
 - Communicate updating of the information
 - **Safeguards for communication**
 - Not used for other purposes
 - Unless allowed by sending Party
 - **Interconnection of files**
 - Authorisation from the DPA for a particular inquiry
 - Compliance with clear legal provisions
 - **On-line access to other files**
 - Only if allowed by national law



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- **Publicity**
 - DPA will take any measure to ensure publicity
 - Without hindering police activity
- **Right of access**
 - All least indirect
 - Reasonable intervals
 - Without undue delay
 - According national law



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- **Right of rectification**
 - When appropriate
 - Rectification, cancellation, corrective statement
- **Restriction of rights**
 - Indispensable for a legal task of the police
 - If necessary
 - Protection of data subject rights
 - Protection of rights and freedoms of others
- **Refusal justified in writing**
- **Right to appeal**
 - DPA or other independent authority



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- **Length of storage**
 - Deleted when they are no longer necessary for the purpose justifying their collection
 - Taking into account
 - Necessity after conclusion of an inquiry
 - Final judicial decisions, especially, acquittal, rehabilitation, spent convictions and amnesties
 - Age
 - Sensitive data
 - Establishing
 - Fixed retention periods for different categories of data
 - Regular review of quality of data and need for conservations
- **Appropriate security measures**



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