GDPR IN TERMS OF DATA PROTECTION IN THE FIELD OF HRM

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Abstract

The General Data Protection Regulation (GDPR) has been one of the most debated legislation issues for the last three years. This is due to the fact, that the legal regulation has fundamentally affected the previous practice in handling of personal data. However, in the information age, the importance of increased protection of personal data and the security of data processing has to be addressed. Similarly, to other organizations, the business sector enters in contact with numerous personal data that need to be processed in accordance with the applied rules of legislations. The issue of GDPR is a crucial question in the field of human resources management, where all the personal and further data regarding human resources is centralized. Therefore, even in human resources management it was necessary to adopt regulatory measures for daily application of the regulation in practice. However, the business practice shows that there are several incorrect steps and procedures in the field of human resources management when applying the GDPR in practice. This paper is focusing attention on the most important aspects of GDPR in terms of correct application of it in the field of human resources management.

Key words: GDPR, human resources, human resources management, data security

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Introduction

Personal data are linked to a natural person. In the context of human resource management, personal data are linked to employees. Through personal data, each natural person is considered a unique and irreplaceable being. Personal data make it possible to identify not only basic information about the person (e.g. name, surname, permanent address, nationality) but also other data (on its social and economic environment).The handling of personal information or records where such data are present is now a part of the legislation and the legislator has also set clear criteria to avoid any arbitrary manipulation and violation of

relevant legislation in this section. In business practice, this issue mainly concerns human resources departments in companies or organisations.

Under the conditions of the Slovak Republic, the employee's right to protection of his personal data and the employer's right to protect their property have the character of constitutional rights and the definition of their relationship is therefore essential. Today, human resources managers do not work only within a managerial view of human resources issues. There is a large amount of legislation in this area and managers must be familiar with it to make effective decisions within a legal framework. The first reason we decided to address the issue of personal data protection in labour relations is the fact that employees' rights and personal data protection obligations are the most likely to be violated in employment relations. The second reason was the adoption of the GDPR at the European level since May 2018. The third reason was the fact that the Slovak Republic was the first Member State of the European Union to adopt a *new* piece of legislation fully accepting European legislation.

1 Theoretical background

As Svec, Horecky & Madlenak (2018) today's technologically advanced era has put an increasing focus on the concept of personal data protection. Prevention is precisely the responsibility of the employer to have increased attention as a body handling personal information. This is mainly because of a potential interference with the rights granted by the law of the highest legal force (e.g. national constitutions), in particular personality rights. Many legal professionals consider the right to the protection of personal data as an integral part of it. Employment relationships as a type of legal relationship are an area for which there is a specific presence of an increased risk on employer staff information processing and therefore inconsistent treatment of personal data amounts to illegal intervention in their personal data.

Regulation (EU) 2016/679 of the European Parliament and of the Council GDPR reflects the significant changes in the computerised society and is the reaction of European legislation to these changes. We can therefore conclude that it is an expression of the ability and flexibility of European law to change or adapt legislation to new social transformations. According to Noskova (2019) the primary objective of the adoption of this Regulation was to ensure a high level of protection of personal data of individuals and to remove possible obstacles to their processing, loading. The creator's intention was according to Tamburri

(2020) also to remove diverging provisions of national legislation in different Member States and to ensure the "consistent and uniform application of the rules on the protection of fundamental rights and freedoms of natural persons with regard to the processing of personal data, throughout the European Union".

2 Objective, material and methodology

The main goal of the paper is to provide a comprehensive and more accurate analysis of the legal aspects of the protection of personal data in employment relationships under the GDPR and the Data Protection Act. In addition to the main goal, we have formulated partial goals:

1. verify the presumption that, at present, the Slovak legislation on the protection of the personal data of the employee is sufficient,
2. analyse the related legal arrangements contained in the Labour Code and possibly provide proposals "de lege ferenda".

In the context of the processing of the subject matter, qualitative methods were appleied due to the nature of the examined topic. Our main goal and partial goals are to be achieved, in particular through a thorough study of legislation, professional and scientific literature. Due to the nature of the scientific article, we use a number of scientific methods suitable to get deeper knowledge in the topic of management and in the context of the law. This concerns in particular the use of critical analysis for the review of the legal situation and of the legislation as well as using the method of abstraction.

3 Results and discussion

The GDPR is subject to the processing of personal data of individuals in different legal relationships and spheres of life. It does not exclusively focus on the processing of personal data between the employer and the employee. On the other hand, not forgetting the modification of personal data in employment relationships regarded as specific processing situations. It sets out in its all provisions the general rules for the processing of personal data, but Article 88 represents a special case of processing in the employment context. Member States were required to notify to the European Commission, by 25 May 2018, the provisions of the adopted legislation providing for more detailed rules to ensure the prevention of the rights and freedoms of the processing of employees' personal data from the recruitment stage until the termination of the employment relationship. It is also possible to implement more specific rules on the processing of personal data in collective agreements (including company

collective agreements). The wording of the article of Article 88 draws attention to the more specific rules laid down by the Member States *which* specify the processing of personal data in employment relationships.

In the context of employer-employee relations, we would point out the exception of the record keeping of processing operations for organisations employing fewer than 250 employees. The obligations of the controller referred to in Article 30(1) and the processor referred to in paragraph 2 of the same Article shall not apply to such undertakings. The legislatormeant small or medium-sized enterprises, micro-enterprises. As indicated by Vlacsekova & Mura (2017), a very important condition is that the processing is *unlikely to* endanger the rights and freedoms of data subjects.

As a full member of the European Union, the Slovak Republic reacted immediately to the European change in the protection of personal data. This was reflected in the new adoption of Act No. 18/2018 Col. on the protection of personal data ('the Personal Data Protection Act'). Indeed, together with the Regulation and the GDPR, the GDPR represents a comprehensive legal framework for the protection of personal data. This is evidenced by the fact that the Act on the Protection of Personal Data also covers those activities related to the processing and protection of personal data which do not fall within the scope of European Union law (e.g. law enforcement activities).

In the field of the protection of personal data in employment relationships, the status of lex specialis is Act No. 311/2001 Col. the Labour Code, as amended (the Labour Code).The protection of personal data is governed by Article 11 of the Basic Principles, the provisions of Section 13 (4) and Section 41 and as follows. As stated in Bognar & Bencsik (2016), the protection of personal data must be respected from the very beginning of the employment relationship until it is finished. Kalpokiene (2020) warns that the law on the protection of personal data is a general law (lex generalis).The principle of "lex specialis derogat legi generali" applies to the relationship between the Law on the protection of personal data and the Labour Code. From the above we inherit priority application of the legislation contained in the Labour Code and subsequent application of the provisions of the Personal Data Protection Act.

3.1 Analysis of selected terms

The GDPR provides a definition of personal data. It is any information on a *natural person* who identifies or is identifiable by an individual. An identified or identifiable person is

designated as data subject. The term is used across the entire Regulation of the GDPR. The status at work or the function performed by the person concerned is immaterial. For this reason, the GDPR applies to both the employee and the defaulting person, the customer, the patient, the client, the consumer; not applicable to deceased persons.

The Labour Code does not define what is to be regarded as personal data. This is a comprehensible result not only because of the nature of the Labour Code itself, but also from the scope of that code. As already mentioned, the Labour Code deals with the issue of employment relationships. On the other hand, this legislation refers to personal data and its prevention within the framework of its fundamental principles and other provisions.

The nature of the personal data of employees who may be processed and collected by the employer is laid down in Article 11 of the Workers' Statute. Only personal data relating to qualifications and professional experience are concerned. The employer is also entitled to collect another type of data (e.g. not meeting the elements of personal data under the Personal Data Protection Act) and only in the case of data relevant for the performance of the employee's work (Vydrová, 2018). However, in our view, it is wrong to retain the case-law and practice itself in order to determine what constitutes, in particular, the content of the term which is important from the point of view of employment. The definition of personal data is not included in this Article. Therefore, we can draw the legislator's indirect approval of the definition of 'this term in the Personal Data Protection Act'.

The Labour Code lists exhaustively and exhaustively that the employer is not in a position to request information from his staff on their political, professional and religious affiliation, pregnancy, family and integrity. However, in the case of good repute, there is exception where the nature of the work requires the integrity of the staff member. In accordance with Paragraph 13 (4) of the Workers' Statute, the employer is equally mandatory to prohibit the worker's private life from being adversely affected, without there being any serious reason relating to the particular nature of his activities. The Labour Code wrongly does not define the concept of 'serious reason', thus giving rise to legal uncertainty.

3.2 Processing of personal data in employment relationships

Wefersová (2015) states that the employer comes into contact with personal data and processing them from the stage of showing an interest in employment until after it has been completed. However, some processing operations continue after that moment (e.g., archiving, processing operations in relation to the liability of a former employee).

However, as the Kalpokiene (2020) say, the employer already obtains information on its potential employee prior to the start of the employment relationship, e.g. during an interview with the job seeker. At this stage, some theoreticians (Žuľová, Švec & Madleňák, 2018) speak of two major processing operations — collection and recording. The conclusion of a contract of employment in employment practice supplements the employers' performance section with other personal details of the employee concerning residence, the health insurance company, the social insurance company. Vilcekova (2015) expresses confidence that personal information must be stored and archived during the legal or term specified by the operator. After its expiry, the employer is obliged to destroy the personal data in the prescribed way. Breaking the CDs, the deletion of data in electronic databases is an appropriate way of doing so. Vilcekova (2011) draws attention to the essence of the disposal of personal data in the definitive inability to restore the destroyed data.

It is also important to mention the fact that the employer is obliged to protect personal data generated by the processing operations throughout the period of employment. Olšovska, Mura & Švec (2016) points out that even jobseekers enjoy protection against discriminatory behaviour of a potential employer. It is guaranteed in full by the provisions of the anti-discrimination law. The personal data of candidates for employment must be used on the basis of a work interview for the sole purpose of that interview. Therefore, the employer must ensure that he collects only the personal information he needs when assessing the candidate's suitability for a job position.

Conclusion

The protection of personal data in the information era has been subject to substantial changes since the entry of the GDPR into force. The regulation itself governs personal information (their definitions), their handling and the different forms of processing thereof *in general*.It is not exclusively devoted to employment relations. On the other hand, these relations are not overlooked and, therefore, on the basis of analysis and inferences, it is possible to apply its provisions to the employment area. The new European legislation has the nature of a regulation. It is therefore directly applicable in the Member States. Some took it in the form of amendments supplementing the existing legislation. We consider such a regulation of personal data after examination of the relevant materials to be unnecessarily confusing for data subjects in particular. We consider it correct that the Slovak Republic has adopted a new Act on the protection of personal data in an effective way to respond to legislative changes.

The Personal Data Protection Act, like the GDPR, deals with personal data in general. This means that its subject matter is not limited to a specific type of legal relationship and therefore the Labour Code is required to protect personal data in employment relationships.

As employers process the data of their employees at every stage of their employment relationship, they act as operators. It is therefore required that, when processing such information, they always comply with their legal obligations. If this is not the case, they must be held liable and deal with the consequences.

The new legislation has strengthened and specified the penalties. This procedure is intended to provide an incentive for the employer to determine the purpose, method and method of handling personal data. In our view, it is necessary for employers to be aware of what kind of personal data they process (normal or sensitive data) and to adjust their behaviour (compliance with different obligations), since any misconduct on the part of the employer when handling personal data is unacceptable.

On the basis of our findings, we have come to the conclusion that both European and Slovak legislation grants greater protection to the rights of employees who are perceived as disadvantaged by the dispute. We consider that employees' right to privacy (including personal data protection) will be afforded greater protection than the employer's right to protection of property. Such a conclusion is the logical conclusion of de facto inequality between the entities of the employment relationship.

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