International Programs

Summer 8-7-2020

How legislations of Tajikistan and Kyrgyzstan Regulate the Issue of Validity of a Consent for the Processing of Personal Data

Faridun Yusufov

Follow this and additional works at: https://surface.syr.edu/eli

Part of the Privacy Law Commons

The views expressed in these works are entirely those of their authors and do not represent the views of the Fulbright Program, the U.S. Department of State, or any of its partner organizations.

FULBRIGHT

How legislations of Tajikistan and Kyrgyzstan regulate the issue of validity of a consent for the processing of personal data.

By Faridun Yusufov. English Language Institute, Syracuse University, August 2020

Abstract:

This research explores differences in legislations of Tajikistan and Kyrgyzstan and compares provisions contained therein about the validity of consent to process individual data which are also evaluated in terms of their compliance with elements of validity of the consent researched by some authors.

Introduction:

Consent is a cornerstone element in legal relationships and has a transformative feature. According to Schemer "consent can change the act of entering into a house from trespassing (no consent) to visiting (consent)" (Schemer, *et al.* 2014. p.172) [1]. The same feature of the consent is applicable to the relationships concerning the use of individual's data. Edgar A. Whitley (2009) considers the consent to be the key mechanism that allows to decide on the methods of how personal data can be processed [2].

Legislators in Central Asia use almost similar approach in determination of a consent as a legal mechanism in information relationships, but address the issue of the validity of a consent differently. While some countries have advanced in shaping their regulatory framework for information relationships, others are just at the outset of the establishing a legal basis for that.

An analysis of the legislation of the protection of personal data in Tajikistan and Kyrgyzstan shows that the Kyrgyz law respects consent for use of personal data while Tajik law does not.

Elements of a valid consent (Faden and Beauchamp 1986, p. 278) [3]	Tajik law [4]	Comparison vs.	Kyrgyz law [5]
Substantial understanding	The data subject must be: a) notified of the data collected about subject; b) provided with access to the data concerned; c) entitled to demand the correction of inaccurate or misleading data.		Before providing personal data, the subject must be familiarized with: a) the list of collected data; b) the grounds and purposes of their collection and use; c) other possible use of personal data.
Intentionality	Tajik law is silent on this while Kyrgyz law requires the consent must be clear. However, in both countries the issue of implied consent is not regulated at all. In some cases, legislations of both countries allow actions to be considered as a consent by a virtue of analogy in law.		
Absence of coercion	No specific provisions. Civil code provisions regarding the validity of transactions that are made under coercion may be applicable, but this approach may also be questionable.		Consent is a free expression of the will by which the subject notifies the controller of the consent to processing subject's personal data.
Authorization of the course of action	No provision.		The consent form shall contain a list of consented operations with personal data, including the possibility of transferring to a third party, other possible use of personal data, a general description of the methods of processing [6].

In conclusion, Tajik regulatory framework for personal data privacy is in its very nascent stage and requires further shaping of the legal practice, especially in parts related to the authorization of the processing and absence of coercion when consent is requested, while Kyrgyz law addresses the issue of validity of a consent in a sufficient manner.

References:

1. Schermer, B. W., Custers, B., & van der Hof, S. (2014). The crisis of consent: How stronger legal protection may lead to weaker consent in data protection. *Ethics and Information Technology*, *16*(2), 171–182. https://doi.org/10.1007/s10676-014-9343-8

2. Edgar A. Whitley. (2009). Informational privacy, consent and the "control" of personal data. *Information Security Technical Report, 14*(3), 154-159. https://doi.org/10.1016/j.istr.2009.10.001

3. Faden, R., & Beauchamp, T. L. (1986). *A history and theory of informed consent*. New York: Oxford University Press

4. The Law of the Republic of Tajikistan "On the protection of personal data", No. 1537 (2018). Retrieved from http://mmk.tj/system/files/Legislation/1537_TJ.doc.pdf

5. The Law of the Republic of Kyrgyzstan "On personal information", No 58 (2008). Retrieved from http://cbd.minjust.gov.kg/act/view/ru-ru/202269

6. Regulation for the obtaining the consent of the subject of personal data to the collection and processing of its personal data, the procedure and form of the notification of subjects of personal data about the transfer of their personal data to a third party, # 759 (2017). Retrieved from https://grs.gov.kg/ru/subord/drnags/drnags_npa/735-poriadok-poluchieniia-soghlasiia-subiekta-piersona/

7. Background image retrieved from: https://pixabay.com/ru/