

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

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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 Scherer “consent can change the act of entering into a house from trespassing (no consent) to visiting (consent)” (Scherer, *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]

Comparison Tajik law ^[4] 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.

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