

## **PERSONAL DATA PROTECTION IN HIGHER EDUCATION - BULGARIA'S EXPERIENCE**

**Andriyana Andreeva<sup>1</sup>, Zhivka Mateeva<sup>2</sup>**

<sup>1</sup>Assoc. Prof. University of Economics – Varna, Bulgaria, [a.andreeva@ue-varna.bg](mailto:a.andreeva@ue-varna.bg)

<sup>2</sup>Chief Assist. Prof, Ph.D., University of Economics – Varna, Bulgaria, [jivkamateeva@ue-varna.bg](mailto:jivkamateeva@ue-varna.bg)

### **Abstract**

This paper examines several topical issues related to personal data protection in the field of higher education. The applicable European acts and the respective national laws and regulations in the Bulgarian legislation have been studied. The authors set out to explore the specifics of personal data protection and the obligations of universities as data controllers. The subject of study is relevant due to the ongoing processes of digitization in education and the associated increased risk with corresponding responsibility for data protection. The grounds for collecting, processing and storing personal data, the principles and categories of data processed by higher education institutions have all been analysed. As a result of the analysis, certain conclusions and summarisations of theoretical and practical significance have been put forward.

**Keywords:** personal data, principles of protection, personal data controller, principles, higher education.

### **1 INTRODUCTION**

Personal data protection is an important component of the information security of natural persons, which finds application in various spheres of modern life, including in the field of higher education (Ivanova & Mateeva, 2022, p. 50). In the dynamics of modern society, higher education institutions respond with a rapid change corresponding to the new social realities. Higher education institutions in Bulgaria carry out their activities in accordance with the applicable European and national legislation on personal data protection.

**The relevance of the chosen subject** ensues, on the one hand, from the need for higher education to follow the pace of time and meet the high demands of the labour market, which needs highly qualified workforce. Part of this process is related to the digitalization of educational services and scientific research. At the same time, these processes take place for the most part in an online environment and, accordingly, the risk for the protection of personal data of individuals increases. However, such developments are irreversible and universities are faced with the challenge of combining the modernization of their activities with guarantees for the protection of personal data of individuals. The issue of personal data protection has repeatedly been the subject of research in Bulgarian and foreign scholarly literature, but the topic has been relatively scarcely studied in the context of higher education.

The **goal** of this paper is to facilitate and support higher education institutions in the process of achieving compliance with the applicable legislation on personal data protection, namely Regulation 2016/679 and national laws and regulations, by systematizing the personal data subjects, principles and categories in the field of higher education. As a result of the analysis, conclusions, summarisations and specific proposals have been made.

In order to achieve the set goal and the ensuing research tasks, the authors have employed the traditional legal research methods of legislative analysis, induction and deduction.

The study has taken into account the current legislation as of December 2022.

The paper does not purport to be comprehensive on the subject, but only to introduce into scholarly debates some of the specifics of personal data protection in the field of higher education.

## **2 APPLICABLE LEGISLATION ON THE PROTECTION OF PERSONAL DATA PROCESSED BY HIGHER EDUCATION INSTITUTIONS**

Higher education institutions in Bulgaria provide personal data protection in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR)<sup>1</sup> and the Personal Data Protection Act (PDPA).

The new legal framework of the European Union (EU) in the field of personal data protection is the GDPR, which repealed Directive 95/46/EC<sup>2</sup> and is directly applicable in EU Member States as of 25 May 2018. Its purpose is to ensure a consistent and uniform application within the EU of the rules for protection of the fundamental rights and freedoms of natural persons in relation to the processing of personal data.

The territorial scope of the GDPR is determined on the basis of two alternative criteria: establishment or scope of data processing activities (Toshkova-Nikolova & Feti, 2019, p.40).

The first criterion concerns controllers and processors which:

- Are established in the EU, regardless of whether the processing takes place in the EU or not;
- Are not established in the EU, but in a place where Member State law applies by virtue of public international law.

The second criterion applies to controllers and processors of personal data that are not established in the EU, but process personal data of natural persons located in the EU. The provision of Article 3, paragraph 2 of the GDPR expressly lists the cases that fall within the scope of this criterion. These are processing activities that are related to:

- The offering of goods or services to data subjects who are in the Union, irrespective of whether a payment of the data subject is required, to such data subjects in the Union;
- The monitoring of the behaviour of data subjects, as far as their behaviour takes place within the EU.

The GDPR fundamentally changes the philosophy of personal data protection: the main focus is on protecting the rights of the data subject (natural person) and not on organizational and technical protection measures; the responsibility for data security is imposed exclusively on the personal data controller (Tselkov et al., 2020, p. 38). For all that, guaranteeing the free movement of personal data and strengthening the trust and security of data subjects require simultaneous measures to implement the GDPR and introduce its provisions at the national level. This necessitated a change in the current legal framework in Bulgaria and led to the need to adopt a single national law on the protection of personal data, namely the PDPA. In this regard, in 2019 the Bulgarian PDPA<sup>3</sup> underwent a radical change. It can be concluded that the purpose of the mentioned acts is to govern the protection of the personal data of natural persons while processed, including in the field of higher education.

## **3 BASIC PRINCIPLES RELATED TO THE PROCESSING OF PERSONAL DATA BY HIGHER EDUCATION INSTITUTIONS**

When processing personal data, higher education institutions must observe the following basic principles laid down in Article 5 of the GDPR:

- Lawfulness, fairness and transparency;
- Processing purpose limitation;
- Data minimisation;

---

<sup>1</sup> Official Journal, L 119, 4.05.2016

<sup>2</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OBL 281, 23.11.1995, pp. 31-50

<sup>3</sup> Promulgated in State Gazette, No. 17 of 26.02.2019

- Accuracy and keeping up to date of data;
- Storage limitation;
- Integrity and confidentiality;
- Accountability.

In order to increase the level of personal data protection in the field of higher education, it is necessary for these principles to be well known not only by controllers, but also by all actors in the data protection system (processors, joint controllers, persons under Article 29 of GDPR) so that they can be implemented effectively. Good knowledge of these principles is not an end in itself, as they can be used to assess whether there are data processing violations, as well as to establish which rights of individuals have been violated (Mateeva, 2020, p. 103).

#### **4 HIGHER EDUCATION INSTITUTIONS AS PERSONAL DATA CONTROLLERS**

According to Article 4 (7) of the GDPR, “controller” is the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law. In principle, there is no limitation as to the type of entity that may assume the role of a controller but in practice it is usually the organisation as such, and not an individual within the organisation (such as the CEO, an employee or a member of the board), that acts as a controller (EDPB, 2020, p. 3)<sup>4</sup>. When assessing which person/structure is the personal data controller, the legal framework applicable to its activity must be taken into account (Feti & Toshkova-Nikolova, 2020, p.55). Higher education institutions are personal data controllers that carry out their activities in compliance with laws and regulations such as the Higher Education Act, the Ordinance on the state requirements for the acquisition of higher education according to educational and qualification systems, Council of Ministers decrees and the internal regulations and resolutions of the Academic Councils. Controllers are responsible for the processing of personal data of natural persons in the context of their duties (Andreeva & Mateeva, 2018, p.143). Controllers are required to provide open, clear and accurate information about what data will be processed, how it will be collected and processed, and whether it will be transmitted to third parties (Karadzhov, 2021, p.18). Supervision on the entire data processing process is exercised by the controller itself. The controller’s primary task is to ensure that personal data is processed lawfully, fairly and in a transparent manner, in accordance with the requirements of the applicable data protection legislation.

#### **5 CATEGORIES OF INDIVIDUALS WHOSE DATA ARE PROCESSED BY HIGHER EDUCATION INSTITUTIONS**

In the field of higher education, the following main categories of natural persons whose data are processed by the relevant higher education institution can be outlined:

- Students;
- Doctoral students;
- Post-graduate students;
- Student candidates;
- Staff (members of the academic staff, lecturers and administrative staff);
- Other natural persons related to the activities of the higher education institution.

These are data subjects within the meaning of Article 4, item 1 of the GDPR and the processing of their data leads to the formation of a data file or filing system. According to Article 4, item 6 of GDPR, a “filing system” is any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis. For example, personal data processed by higher education institutions can be grouped into the following filing systems: student candidates; students; staff; mobility; dormitories; access control and registration; video surveillance, etc. The existence of a filing system is key to the material scope of the GDPR, as its rules apply to the processing of personal data that

---

<sup>4</sup> EDPB, Guidelines 07/2020 on the concepts of controller and processor in the GDPR, Version 2.0, Adopted on 7 July 2021.

are part of a filing system or intended to constitute part of a filing system (Feti, 2018 , p.39).

The data of the categories of subjects processed by the higher education institution is kept both on paper and on electronic media. In this regard, it should be noted that in view of the emergence and development of digital technologies in Bulgaria, respectively in the field of higher education, it was necessary to update and optimize the regulations on the basic documents issued by higher education institutions. In 2022, Council of Ministers Decree No. 178<sup>5</sup> amended the Ordinance on the state requirements for the content of the basic documents issued by higher education institutions, with the aim of improving the organization and effectiveness of education in higher education institutions in Bulgaria. The provisions of Art. 1, paras. 4 and 5 of said Ordinance gave higher education institutions the legal basis to issue, keep and store main registers, academic transcripts and certificates also in electronic form, according to their discretion and capabilities. Such documents are kept and stored in accordance with the GDPR, the PDPA, the Electronic Documents and Electronic Authentication Services Act and the Ordinance on the minimum requirements for network and information security.

## **6 CATEGORIES OF PERSONAL DATA PROCESSED BY HIGHER EDUCATION INSTITUTIONS**

The main categories of personal data processed by higher education institutions can be related to:

**a) the provision of educational services to student candidates, students, doctoral students, post-graduate students and other natural persons** - for example, these may be data concerning:

- Physical identity – names, national personal number (foreigner's personal number, foreigner's identification number per an original identity document), date and place of birth, citizenship, address, telephone number and e-mail for correspondence. According to Art. 25d of the PDPA, a controller or processor of personal data may copy an identity document, a driver's license or a residence document only where this is provided for by law. The systemic interpretation of the concept of "collecting" as a personal data processing operation should be considered in view of the nature, scope, context and purposes of the specific processing. Traditionally, Bulgarian legislation specifies the actions and operations that may be carried out to implement the so-called "collecting", such as: establishing an identity under Art. 170 of the Civil Procedure Code (CPC); taking a copy of an official identity document under Art. 53 of the Measures Against Money Laundering Act, lifting of fingerprints under Art. 71 of the Ministry of Interior Act, etc. (Opinion of the Commission for Personal Data Protection, reg. No. ПНМД-01-25/17.03.2022). In this regard, higher education institutions are not allowed to copy and store identity documents. An identity document may only be used to verify the validity of the specified data and the identity of the relevant individual whose data is processed by the higher education institution.

- Education – documents for completed education (obtained degree) or qualification, where such are required for the degree programme for which the person is applying; data related to participation and ranking in Olympiads/competitions;

- Health status – documents for incapacity for work in certain cases, medical certificates for foreign students, etc.;

- Social status – civil status documents for the purpose of providing scholarships, bank account details for scholarship payment, etc.

**b) employment and freelance contracts to which the higher education institution is a party**, such as the physical identity of the staff – names, national personal number (foreigner's personal number), identity card number, date and place of issue, place of birth, address, telephone number and e-mail for correspondence, i.e. all necessary details for the conclusion of an employment/freelance contract; a document for acquired education or qualification, where required for the position for which the person is applying; employment background (work experience and professional biography); social security and health insurance status; salary, etc.

**c) contractual relations with contractors, partners and external service providers**, such as personal data of external service providers, contractors and partners – physical identity, ability (qualification) to carry out professional activity, economic and financial status, etc.

---

<sup>5</sup> Decree No. 178 of 15 July 2022 amending and supplementing the Ordinance on the state requirements for the content of the basic documents issued by higher education institutions, adopted by Council of Ministers Decree No. 215 of 2004 (SG, No. 75 of 2004). Promulgated, SG No. 57 of 22 July 2022.

d) **ensuring internal order and security in the university**, such as physical identity – security and video surveillance, access control, etc.

## **7 GROUNDS ON WHICH DATA IS PROCESSED BY HIGHER EDUCATION INSTITUTIONS**

The existence of legal grounds for data processing is an absolute prerequisite for the lawfulness of the processing (Feti & Toshkova-Nikolova, 2020, p.110). The grounds for the lawful processing of personal data are expressly stated in Article 6 and Article 9 of the GDPR. They are alternative and to be determined by the personal data controller before the processing has started. The controller must properly assess which ground is applicable based on the specific purpose.

The legal grounds may be different depending on the purpose of the processing of personal data of the categories of natural persons in the field of higher education. For example, the data of students (students, post-graduate students, doctoral students) to whom the controller provides educational services are processed in fulfilment of the controller's legal obligations under the Higher Education Act, the Ordinance on state requirements for the acquisition of higher education by educational and qualification degrees, the Ordinance on the state requirements for admission of students to the higher education institutions of the Republic of Bulgaria, the Ordinance on the state requirements for the content of the basic documents issued by higher education institutions, Council of Ministers decrees, etc. The legal grounds on which the data of the staff (lecturers and employees) of the higher education institution (controller) in its capacity as an employer, is the fulfilment of the requirements of the labour and social security legislation, which expressly stipulates the conditions under which the collection, storage and provision of personal data takes place. It should be noted that the termination of the employment relationship does not set aside the need to process the collected personal data, respectively the obligation to destroy them (Aleksandrov, A., 2018, p.61). The data of the natural persons (contractors and partners) with whom the higher education institution (the data controller) enters into contractual relationships are processed on the grounds of the performance of a contract or the establishment of pre-contractual relations.

## **8 PROTECTION MEASURES IMPLEMENTED BY HIGHER EDUCATION INSTITUTIONS AS CONTROLLERS**

The higher education institutions as a personal data controllers must implement appropriate and effective measures and be able to prove that the processing activities are in accordance with the GDPR. The European Data Protection Board (EDPB) states in its guidelines that being appropriate means that the measures and necessary safeguards should be suited to achieve the intended purpose, i.e. they must implement the data protection principles effectively. The requirement to appropriateness is thus closely related to the requirement of effectiveness (Guidelines 4/2019, pp. 6-7)<sup>6</sup>. The measures that the controller is to implement must correspond to the technological level at the relevant time and be consistent with the costs necessary for their implementation. For example, the measures that can be implemented by the relevant higher education institution may include: adoption and implementation of internal policies and rules for data protection, staff training on issues in the field of personal data protection, adherence to approved codes of conduct, pseudonymisation and encryption of personal data, internal audits of the implementation of measures, etc. It is the controller that decides which measures are appropriate. The effectiveness of the measures depends on the context of the processing in question and an assessment of the nature, scope, context and purpose of the processing, the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing, which should be taken into account by the higher education institution when determining the means of processing.

## **9 CONCLUSION**

As a result of the conducted research on the subject of personal data in the field of higher education in Bulgaria, the following conclusions can be drawn with a theoretical and practical focus:

1. Higher education institutions in Bulgaria provide personal data protection in accordance with acts on EU level: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR)<sup>7</sup>, on national level: the Personal Data Protection Act (PDPA), as well as internal acts of

---

<sup>6</sup> EDPB, Guidelines 4/2019 on Article 25 Data Protection by Design and by Default, Version 2.0, adopted on 20 October 2020

<sup>7</sup> Official Journal, L 119, 4.05.2016

the individual universities aiming to reflect the specifics of their activities, respectively the data protection measures within them.

2. Data subjects in the field of higher education are categories of persons involved in the main educational and research activities at the various stages. These include students (student candidates, students, doctoral students, post-graduate students); persons from the staff of the higher education institution (members of the academic staff, full-time or part-time lecturers, administrative staff); partners from businesses or the public sector, etc.; as well as other natural persons related to the activities of the higher education institution. Given the heterogeneous nature of these categories of persons, who nevertheless share a common feature – participation in the activities of the higher education institution, it is important, on the one hand, to comply with European and national legislation, but also to observe the internal academic acts.

3. In the current stage of digitalization and use of artificial intelligence in the educational and research process, higher education institutions face multifaceted challenges. One of the urgencies is to provide and guarantee reliable protection of the personal data of individuals. In this sense, the efforts should be aimed at coordinating with the principles of higher education in Bulgaria as laid down in the Higher Education Act, and more specifically the principle of academic autonomy, with the principles of personal data protection. In this regard, the digitalization process is still in its initial stage – only a few higher education institutions have digitized the processes from entry to exit. The national legislative framework in Bulgaria is about to unite the experience and technological advancements of universities and reflect them in a single legal framework.

These conclusions and summarisations do not purport to exhaust all the highlights of the issue – they aim to present the current state of the legal framework on the protection of personal data in Bulgarian higher education and to put forward the issue at the theoretical level in view of its significance and relevance.

## REFERENCE LIST

- Andreeva, A., Mateeva, Zh. (2018). Employers as personal data administrators – specifics and requirements in the context of the information society. *Globalization, the State and the Individual*. Free University of Varna, 2(18), pp. 139-147
- Aleksandrov, A. (2018). Kakvi lichni danni se obrabotvat po vreme na deystviето i pri prekratyavaneto na trudovia dogovor. *Trud i pravo*, (3). s. 55-61
- Decree No. 178 of 15 July 2022 amending and supplementing the Ordinance on the state requirements for the content of the basic documents issued by higher education institutions, adopted by Council of Ministers Decree No. 215 of 2004 (SG, No. 75 of 2004). Promulgated, SG No. 57 of 22 July 2022
- EDPB, Guidelines 07/2020 on the concepts of controller and processor in the GDPR, Version 2.0, Adopted on 7 July 2021
- EDPB, Guidelines 4/2019 on Article 25 Data Protection by Design and by Default, Version 2.0, adopted on 20 October 2020
- Feti, N., Toshkova-Nikolova, D. (2020). Prilagane na zashtitata na lichnite danni. Metodiki, prepорaki i prakticheski stapki. Sofia: IK „Trud i pravo“
- Feti, N. (2018). Poddarzhane na registar na deynostite po obrabotvane na lichni danni, *Trud i pravo*, (9), s.37-48
- Ivanova, R. P., Mateeva, Zh. (2022). Compliance with the principle of accountability by the higher education institutions - administrators of personal data in Bulgaria, *Proceedings of ADVED 2022- 8th International Conference on Advances in Education*, Istanbul, Turkey 10-12 October 2022
- Karadzov, V. (2021). Zashtita na dannite po podrazbirane i na etapa na proektirane v epohata na digitalizatsiyata, *Sbornik s dokladi Zashtita na lichnite danni i digitalizatsiyata – predizvikatelstva i perspektivi*, IU-Varna: Nauka i ikonomika, s. 9-20
- Mateeva, Zh. (2020). Principles of Personal Data Protection, *Audit 2* (20), Vol. 28, pp. 95-104
- Opinion of the Commission for Personal Data Protection, reg. No. ПНМД-01-25/17.03.2022
- Toshkova-Nikolova, D., Feti, N. (2019). Zashtita na lichnite danni. Sofia: IK „Trud i pravo“

Tselkov, V., Petkov, D., Sredkov, G., Georgiev, P. (2020). *Zashtita na dannite printsipi i praktiki*. Sofia: Za bukвите – O pismenehy