

REALIZATION AND PROTECTION OF PERSONAL NON-PROPERTY RIGHTS IN THE CONDITIONS OF DIGITALIZATION AND EUROPEAN INTEGRATION

Maksymiv Lyubomyr

DOI: <https://doi.org/10.61345/1339-7915.2024.5.13>

Annotation. The article analyzes international acts and national legislation that establish personal non-property human rights as the highest social value, as well as legal guarantees for the exercise and protection of these rights. The aim of the work is to outline the transformation of personal non-property rights in the context of digitalization and European integration, in particular, regarding the use and protection of personal data that are directly related to the fundamental rights of person and citizen. The methodological basis of the study is the comparative legal method, through which a comparative analysis of international and domestic legislation was carried out, the method of analysis and synthesis, induction and deduction, generalization, which revealed the features of classical personal non-property rights and non-property rights caused by the process of digitalization, as well as the formal-legal method, which allowed us to objectively outline the essence of personal non-property rights at the theoretical and practical levels, including the exchange of personal data in civil circulation. It is proven that the separation of personal non-property rights into a separate type, which differs from their classical form, is due to digitalization. Proposals for amendments to the Civil Code of Ukraine to expand the list of objects of civil rights and include new objects, including such as personal data, as well as regulatory regulation of contractual relations arising from personal non-property objects, which, having received an objectified form, have acquired signs of turnover, are welcomed. In this regard, it is worth enshrining in the codified act the norms defining personal data as an “intangible good that is an object of personal non-property law” and a “tradable object of civil rights.” In addition, it has been proven that the provisions of the Law of Ukraine “On the Protection of Personal Data” comply with the norms of the Constitution of Ukraine, the Universal Declaration of Human Rights, the European Convention on Human Rights, as well as the provisions of Regulation (EU) 2016/67 of the European Parliament and of the Council of 27 April 2016 and Directive (EU) 2019/770 of 20 May 2019, the key provisions of which define the rules for the use of personal data and the contractual regulation of the relationship regarding the provision of personal data in exchange for digital content or a digital service.

Key words: personal non-property rights, objects of civil rights, intangible benefits, person, personal data, protection of personal data, contract.

1. Introduction.

One of the important characteristics of the proper development of civil society is the real provision of human rights, which is considered a sign of a developed rule of law, the result of building democratic relations. Personal non-property rights are natural rights of a person, given to him objectively by virtue of his actual birth and existence. Therefore, the main task of any state is to create legal guarantees for the provision, implementation and protection of personal non-property human rights, which is reflected in taking as a basis international acts that enshrine human rights guarantees and adopting these guarantees in national laws, as well as in creating conditions for observing human rights and freedoms in their everyday life in various spheres of life on the territory of the state where they have citizenship and/or permanently or temporarily reside.

At the international level, the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, became the basis for recognizing the dignity, respect and inalienable rights of a person, which enshrined the basic rights and value of a person, which should contribute to social progress and improvement of human living conditions, to which all states should strive. The basis of the idea is that every person should have all the rights and all the freedoms proclaimed by this Declaration, regardless of race, color, sex, language, religion, political or other beliefs, national or social origin, property, status or of a different position [3]. The Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 [4], based on the Universal Declaration of Human Rights, also enshrines guarantees for the protection and defense of human rights (the right to life, the right to liberty and security of person, the right to a fair trial, the right to an effective remedy, the right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, and others).

The listed international legal acts and the human rights enshrined in them are a guarantee of proper protection and defense of human and citizen rights in civil society. The specified documents became the basis for the development of other international acts - treaties, directives, regulations. Therefore, issues related to the exercise and protection of personal non-property rights must be regulated in accordance with current international instruments and national laws that determine the mechanism of legal regulation of personal non-property relations in civil society, especially in the era of digitalization and expanding opportunities for exercising one's rights and freedoms in the digital space. Since Ukraine is at the stage of passing all stages of accession to the European Union, and the European integration processes are still ongoing, the issues of legal regulation of the exercise and protection of personal non-property rights of an individual in the context of digitalization are gaining particular importance, which determines the relevance of scientific research on this topic.

2. Analysis of scientific publications.

The definition of the basic characteristics of non-property benefits and the guarantee of the exercise and protection of personal non-property rights has become the subject of research by a significant number of scientists, in whose scientific works it is possible to find an outline of the importance of personal non-property rights for the development of civil society, disclosure of the essence and classification of personal non-property rights by species, as well as obtaining effective solutions to improve the mechanism of legal regulation of this issue in legislative acts and obtaining guarantees of their observance in practical activities. In particular, we are talking about the scientific research of O. V. Hryhorenko, O. V. Kokhanovska, M. V. Menzhul, Yu. M. Filonova, S. O. Slipchenko, R. O. Stefanchuk, V. P. Sverdlichenko, V. L. Yarotsky and other scientists. However, in the era of digitalization of various spheres of human life, their personal non-property rights require even closer attention to ensure the proper implementation and protection of these rights, and therefore, in the context of digitalization and European integration of Ukraine, this issue becomes particularly relevant for the study of this topic.

3. The aim of the work.

The aim of the article is to study personal non-property rights in terms of outlining the transformation of personal non-property rights in the context of digitalization and European integration, which determines the features of their implementation and protection, as well as revealing the issue of the use and protection of personal data of an individual in the context of the provision of digital services in exchange for personal data of an individual in the digital space.

4. Review and discussion.

The main law of Ukraine that guarantees personal non-property rights of a person is the Constitution of Ukraine, according to Article 3 of which a person, his life and health, honor and dignity, inviolability

and security are recognized in Ukraine as the highest social value. The state is responsible to the people for its activities. The Constitution of Ukraine guarantees compliance with the principle of the rule of law and has the highest legal force. Accordingly, Section II of the Constitution of Ukraine enshrines the fundamental rights and freedoms of man and citizen, which are inalienable and inviolable, in particular, the right to free development of one's personality, equality before the law and the absence of privileges or restrictions on the grounds of race, skin color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other grounds, the right to life, the right to respect for dignity, the right to liberty and personal integrity, the right to freedom of thought and speech, the right to protection by a court and other rights [5]. Guarantees for ensuring these rights should be provided by the state to every person, regardless of age, health status, property status, professional orientation, etc.

In the theory of legal research, it is stated that personal non-property right is a measure of the possible behavior of the subject of law in relation to goods inseparable from his personality, which are absolute in nature and do not have an economic meaning, thanks to which a person independently determines the line of his behavior in his personal life [12, p. 221]. The legislative consolidation of general provisions on personal non-property rights in Chapter 20 of the Civil Code of Ukraine was at one time perceived as a new stage in ensuring comprehensive development of the individual and ensuring the rights of natural persons in Ukraine [1, p. 23]. After all, one of the general principles of civil legislation defines the inadmissibility of arbitrary interference in the sphere of a person's personal life, and a separate book of the Civil Code of Ukraine outlined the main characteristics of these rights, namely: 1) they belong to the individual by birth or by law; 2) they have no economic content; 3) they are closely related to the individual and he cannot be deprived of these rights; 4) the individual owns them for life; 5) the list of these rights is not exhaustive; 6) an individual determines his or her behavior freely and independently in the sphere of his or her private life; 7) an individual has the right to demand from the state actions aimed at ensuring the exercise of his or her personal non-property rights; 8) personal non-property rights cannot be restricted, except in cases established by the Constitution of Ukraine, the Civil Code of Ukraine and other laws; 9) an individual has the right to protection of his or her personal non-property rights from unlawful encroachments by other persons.

In the Civil Code of Ukraine, personal non-property rights are divided into two groups of rights: those that ensure the natural existence of an individual (the right to life, the right to health protection, the right to freedom, the right to personal integrity, and others) and those that ensure the social existence of an individual (the right to a name, the right to respect for honor and dignity, the right to the inviolability of business reputation, the right to individuality, the right to private life and its secrecy, the right to information, and others) [13]. The specified list of rights is not exhaustive and for each right the content of their exercise is determined with the possibility of more detailed regulation at the level of special laws, for example, the right to information is regulated by the Law of Ukraine "On Information" and other laws. At the same time, for the exercise of personal non-property rights under any conditions, the presence of three elements is necessary: 1) legal capacity; 2) the required amount of legal capacity; 3) a system of principles for the exercise of personal non-property rights [12, p. 223]. Legal capacity arises at the moment of birth of a person and ensures equality of ability to have civil rights and obligations, including personal non-property rights. The legal capacity of an individual is manifested in the ability to realize the meaning of his actions and manage them, as well as in the ability to acquire civil rights for himself through his actions and independently exercise them. Compliance with the principles of exercising personal non-property rights is the basis for exercising rights in his own interests in a proper manner and within the limits determined by law and the nature of these relations.

At the same time, it is impossible not to take into account the rapid development of science and technology, the emergence of new relations that require detailed legal regulation [1, p. 25]. In the context of digitalization, there are changes in the classification of personal non-property rights, in particular when dividing them by content, in addition to general non-property rights of an individual (including two subspecies defined by the Civil Code of Ukraine), general personal non-property rights of a legal entity (the right to a name, to information, to business reputation, etc.), special personal non-property rights of an individual (arising in various spheres of public legal relations - medical,

educational, family, intellectual property, etc.), as well as personal non-property rights of individuals and legal entities, the specifics of the content of which are due to digitalization [8, p. 238]. Personal non-property rights of individuals and legal entities, which are conditioned by digitalization, differ for the most part only in that they are exercised in the conditions of digital reality, which has its own rules of functioning and influence on the content and procedure for exercising and protecting personal non-property rights.

The Concept for Updating the Civil Code of Ukraine (hereinafter referred to as the Concept) explicitly states that the Civil Code of Ukraine does not contain the concept of personal data about an individual, and therefore there are proposals to supplement the Code with this concept and fill it with appropriate content. Therefore, as noted by O. V. Kokhanovska, the analysis of the specifics of sensitive personal data about an individual, which create risks for the personal non-property rights of individuals during their processing, is as important as familiarization with the domestic regulatory framework for the collection, processing, storage, protection, etc. of personal data, the practice and prospects for protecting such rights in judicial and extrajudicial proceedings [7, p. 52].

Article 177 of the Civil Code of Ukraine states that the objects of civil rights are material and intangible benefits that can exist in the material world and/or digital environment, which determines the form of the objects, the features of the acquisition, exercise and termination of civil rights and obligations in relation to them [13]. The list of intangible benefits is defined by Chapter 15 of the Civil Code of Ukraine, Article 201 of which states that personal non-property benefits protected by civil law are: health, life; honor, dignity and business reputation; name (title); authorship; freedom of literary, artistic, scientific and technical creativity, as well as other benefits [13]. At the same time, the Concept proposes to expand the list of objects of civil rights and include new objects, including such as personal data [6, p. 10], which are directly related to personal non-property rights, and to ensure regulatory regulation of contractual relations that arise in relation to personal non-property objects, which, having received an objectified form, have acquired signs of turnover [6, p. 16].

These proposed changes correspond to the tasks facing Ukraine in relation to bringing domestic legislation into compliance with European Union law and fulfilling the conditions of the European Commission for accession with the rights of a country that is a member of the European Union. In particular, Ukraine and the European Union currently have an agreement on cooperation to ensure an adequate level of personal data protection in accordance with the highest European and international standards, in particular relevant documents of the Council of Europe, and cooperation in the field of personal data protection may include, inter alia, the exchange of information and experts [7, p. 53].

V. L. Yarotsky notes that modern automated information systems actively contribute to the formation of voluminous information repositories (databases) that can contain a wide variety of personal information about individuals. Such large-scale accumulation and potential use of personal data of individuals without proper civil law regulation may lead to corresponding negative consequences. At the same time, social progress opens up new opportunities for the use of personal data of an individual as a subject of civil legal obligations aimed at providing and receiving relevant services in the digital segment of civil turnover [14, p. 127].

Regulation (EU) 2016/67 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 (hereinafter referred to as the General Data Protection Regulation) [11] sets out important provisions relevant to the use and protection of personal data, which should serve as a basis for the development of national legislation. In particular, the General Data Protection Regulation states that the processing of personal data is intended to serve humanity, and therefore the right to the protection of personal data is not an absolute right. Economic and social integration has led to a significant increase in cross-border flows of personal data, which requires an appropriate enforcement mechanism and will allow the development of the digital economy at the level of the internal market. In this regard, the consent of a person to the processing of personal data has legal significance, which must provide a clear statement that constitutes a freely provided, specific, informed and unambiguous evidence of the data subject's consent to the processing of his or her personal data, in particular, in the form of a written statement, including by electronic means

or in the form of a verbal statement. This may include ticking a box when visiting a website on the Internet, selecting technical settings for information society services, or other statement or conduct that clearly indicates the data subject's consent [11].

According to the General Data Protection Regulation, the concept of "personal data" means any information relating to an identified or identifiable natural person ("data subject"), in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. The principles of personal data processing are lawfulness, fairness and transparency, purpose limitation, data minimization, accuracy, storage limitation, integrity and confidentiality, and accountability. Since any processing of personal data must be legal and lawful, personal data must be processed based on the consent of the data subject or on another legal basis [11].

If we turn to the analysis of the Law of Ukraine "On Personal Data Protection" [9], we can note the significant compliance of the provisions of the law with the General Data Protection Regulation. For example, the Law stipulates the need to provide consent to the processing of personal data, which is considered a voluntary expression of will by an individual (provided that he is informed) to grant permission to process his personal data in accordance with the formulated purpose of their processing, expressed in writing or in a form that allows for a conclusion to be drawn about the provision of consent (Article 2) with an indication of the possibility of application in the field of e-commerce [9]. In addition, it is stated that the processing of personal data must be carried out openly and transparently, using means and in a manner that is appropriate for the specified purposes of such processing. Personal data must be accurate, reliable and kept up to date as necessary for the purposes of their processing. The composition and content of personal data must be relevant, adequate and not excessive in relation to the purposes for which they are processed (Article 6) [9]. Moreover, Article 7 of the Law prohibits the processing of personal data revealing racial or ethnic origin, political, religious or philosophical beliefs, membership in political parties and trade unions, criminal convictions, as well as data concerning health, sex life, biometric or genetic data [9]. These provisions comply not only with the General Data Protection Regulation, but also with the Constitution of Ukraine, the Universal Declaration of Human Rights and the European Convention on Human Rights.

At the same time, in private law relations, personal data are increasingly becoming an important resource for conducting marketing research in a wide variety of business areas, analyzing labor and capital markets, etc. [14, p. 127], in which regard, a constructive role is played by Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 (hereinafter referred to as Directive (EU) 2019/770), which regulates contractual relations for the supply of digital content and the provision of digital services [2].

According to Directive (EU) 2019/770, the use of personal data in the digital space is that digital content or digital services are often supplied where the consumer does not pay a price but provides personal data to the trader. Recognizing that the protection of personal data is a fundamental right and that personal data cannot be considered as a commodity, they may nevertheless be provided to the seller either at the time of conclusion of the contract or later, for example when the consumer consents to the use of any personal data by the trader [2]. Directive (EU) 2019/770 also explicitly states that personal data should only be collected or otherwise processed in accordance with Regulation (EU) 2016/679 and Directive 2002/58/EC [11]. In the event of a conflict between this Directive and Union law on the protection of personal data, the latter shall prevail. As regards domestic legislation, the provisions of Directive (EU) 2019/770 are reflected in the Law of Ukraine "On Digital Content and Digital Services", according to Article 1 of which the Law applies to relationships in which the contractor, on the basis of a contract, provides or undertakes to provide digital content and/or a digital service to the consumer, and the consumer provides or undertakes to provide his/her personal data, except in cases where their provision is necessary solely for the purpose of obtaining the digital content and/or digital service, without the intention of further using the personal data for any other purposes [10]. Accordingly, further improvement of the legislation is necessary.

5. Conclusions.

Therefore, it can be concluded that the proposals enshrined in the Concept for Updating the Civil Code of Ukraine require further implementation of amendments to the Civil Code of Ukraine in order to define the basic principles of legal regulation of personal data as an “intangible benefit that is an object of personal non-property law” and a “negotiable object of civil rights.” It should be noted that the provisions of the Law of Ukraine “On the Protection of Personal Data” comply with the norms of the Constitution of Ukraine, the Universal Declaration of Human Rights, the European Convention on Human Rights, as well as the provisions of Regulation (EU) 2016/67 of the European Parliament and of the Council of 27 April 2016 and Directive (EU) 2019/770 of 20 May 2019.

References:

1. Hryhorenko O.V. (2024) Osobysti nemaynovi prava cherez pryzmu onovlennia tsyvilnoho zakonodavstva. [Personal non-property rights through the prism of civil legislation renewal]. Rozvytok pryvatno-pravovykh vidnosyn na shliakhu do yevropeiskoi intehtatsii. Matvieievski tsyvilistychni chytannia. Materialy mizhn. nauk.-prakt. konf. Kyiv, 18 zhovt. 2024 r. / V.V. Tsiura, V.O. Bazhanov, B.S. Shcherbyna ta in.; vidp. red. V.V. Tsiura – Development of private legal relations on the way to European integration. Matveev's civilistic readings. Materials of the international scientific-practical conference. Kyiv, October 18, 2024 / V.V. Tsiura, V.O. Bazhanov, B.S. Shcherbyna and others; editor-in-chief V. V. Tsiura. 128. 22–25. [in Ukrainian].
2. Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (Text with EEA relevance.). The Official Journal of the European Union. URL: <http://data.europa.eu/eli/dir/2019/770/oj> [in English].
3. Zahalna deklaratsiia prav liudyny: Pryiniata i proholoshena rezoliutsiieiu 217 A (III) Heneralnoi Asamblei OON vid 10 hrudnia 1948 roku. - Universal Declaration of Human Rights: Adopted and proclaimed by resolution 217 A (III) of the UN General Assembly on 10 December 1948. URL: https://zakon.rada.gov.ua/laws/show/995_015#Text [in Ukrainian].
4. Konventsiiia pro zakhyst prav liudyny i osnovopolozhnykh svobod (Ievropeiska konventsiiia z prav liudyny) vid 4 lystopada 1950 roku. Konventsiiu ratyfikovano Zakonom vid 17.07.97 r. № 475/97-VR. - Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) of November 4, 1950. The Convention was ratified by Law No. 475/97-VR of July 17, 1997. URL: https://zakon.rada.gov.ua/laws/show/995_004#top [in Ukrainian].
5. Konstytutsiia Ukrainy vid 28 chervnia 1996 roku. Vidomosti Verkhovnoi Rady Ukrainy (VVR), 1996, № 30, st. 141. [Constitution of Ukraine]. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#top> [in Ukrainian].
6. Kontseptsiiia onovlennia Tsyvilnoho kodeksu Ukrainy. (2020) [Concept of updating the Civil Code of Ukraine]. Kyiv: Vydavnychi dim “ArtEk”. 128. [in Ukrainian].
7. Kokhanovska O.V. (2024) Personalni dani pro osobu ta ikh obrobka: mozhlyvi ryzyky dlia osobystykh nemaynovykh prav ta tsyvilno-pravovi sposoby zakhystu. [Personal data about an individual and their processing: possible risks to personal non-property rights and civil law methods of protection]. Rozvytok pryvatno-pravovykh vidnosyn na shliakhu do yevropeiskoi intehtatsii. Matvieievski tsyvilistychni chytannia. Materialy mizhn. nauk.-prakt. konf. Kyiv, 18 zhovt. 2024 r. / V. V. Tsiura, V.O. Bazhanov, B.S. Shcherbyna ta in.; vidp. red. V. V. Tsiura. - Development of private legal relations on the way to European integration. Matveev's civilistic readings. Materials of the international scientific-practical conference. Kyiv, October 18, 2024 / V.V. Tsiura, V.O. Bazhanov, B.S. Shcherbyna and others; editor-in-chief V. V. Tsiura. 128. 52–55. [in Ukrainian].

8. Mendzhul M.V., Fazykosh V.H. Pidkhody do klasyfikatsii osobystykh nemaynovykh prav v umovakh tsyfrovizatsii. [Approaches to the classification of personal non-property rights in the context of digitalization.]. Elektronne naukovye vydannia «Analytychno-porivnialne pravoznavstvo». – Electronic scientific publication “Analytical and Comparative Law”. 235–238. DOI <https://doi.org/10.24144/2788-6018.2023.05.41> [in Ukrainian].
9. Pro zakhyst personalnykh danykh: Zakon Ukraïny [On the protection of personal data: Law of Ukraine] vid 01. 06. 2010 r. № 2297–UI. URL: <https://zakon.rada.gov.ua/laws/show/2297-17#Text> [in Ukrainian].
10. Pro tsyfrovyi kontent ta tsyfrovi posluhy: Zakon Ukrainy [On digital content and digital services: Law of Ukraine] vid 10 serpnia 2023 roku. № 3321-IX. URL: <https://zakon.rada.gov.ua/laws/show/3321-20#Text> [in Ukrainian].
11. Rehlament Yevropeiskoho parlamentu i rady (leS) 2016/679 vid 27 kvitnia 2016 roku pro zakhyst fizychnykh osib u zv’iazku z opratsiuvanniam personalnykh danykh i pro vilnyi rukh takykh danykh, ta pro skasuvannia Dyrektyvy 95/46/leS vid 25 travnia 2018 roku. [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, and repealing Directive 95/46/EC of 25 May 2018]. Ofitsiyni visnyk Yevropeiskoho Soiuzu [Official Journal of the European Union] vid 04 travnia 2016 roku. L 119/1. URL: https://zakon.rada.gov.ua/laws/show/984_008-16#Text [in Ukrainian].
12. Sverdlichenko V. P. (2015). Zdiisnennia osobystykh nemainovykh prav v umovakh nadzvychainoho abo voiennoho stanu. [Exercise of personal non-property rights in conditions of emergency or martial law]. Visnyk Kharkivskoho natsionalnoho universytetu imeni V.N. Karazina. – Bulletin of V.N. Karazin Kharkiv National University. № 1151. Seriiia «Pravo». Vypusk № 19. 220–223. [in Ukrainian].
13. Tsyvilnyi kodeks Ukrainy [Civil Code of Ukraine] vid 16 sichnia 2003 roku № 435-IV. Vidomosti Verkhovnoi Rady Ukrainy [News of the Verkhovna Rada of Ukraine], 2003, №№ 40-44, st. 356. URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text> [in Ukrainian].
14. Yarotskyi V.L., Filonova Yu.M. (2024). Problemy tsyvilno-pravovoho rehuliuвання vidnosyn u sferi vykorystannia personalnykh danykh fizychnykh osib: vyklyky suchasnykh tsyfrovyykh realiï. [Problems of civil law regulation of relations in the field of using personal data of individuals: challenges of modern digital realities]. Rozvytok pryvatno-pravovykh vidnosyn na shliakhu do yevropeiskoi intehtatsii. Matvieievski tsyvilistychni chytannia. Materialy mizhn. nauk.-prakt. konf. Kyïv, 18 zhovt. 2024 r. / V.V. Tsiura, V.O. Bazhanov, B.S. Shcherbyna ta in.; vidp. red. V.V. Tsiura. – Development of private legal relations on the way to European integration. Matveev’s civilistic readings. Materials of the international scientific-practical conference. Kyiv, October 18, 2024 / V.V. Tsiura, V.O. Bazhanov, B.S. Shcherbyna and others; editor-in-chief V. V. Tsiura. 128. 126 – 131. [in Ukrainian].

Lyubomyr Maksymiv,

*Graduate student of the Department of Civil Law
educational and scientific legal institute
Vasyl Stefanyk Precarpathian National University
E-mail: lyubomyrmaksymiw@gmail.com*