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Modern development of artificial intelligence technologies and problems of legal regulation of profiling and targeted advertising in Kazakhstan

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Abstract: In 2023, Kazakhstan adopted the Law ‘On Online Platforms and Online Advertising’, aiming to control online advertising. The law does not fully protect personal data during profiling and targeted advertising, being limited to general norms of legislation on the protection of personal data. Moreover, Kazakhstani laws vaguely regulate the automated collection, analysis and processing of data, which form the basis of profiling, microtargeting and artificial intelligence technologies.

The article compares Kazakhstani and European regulations of profiling and targeted advertising. We consider the opinions of Western scholars on how profiling and targeted advertising invade a person’s privacy, autonomy, and freedom, and pose threats to other fundamental rights and freedoms of the individual. The article critically assesses the lack of adequate regulation of profiling and targeted advertising in Kazakhstani law on the protection of personal data.

A comparative analysis of the problem with European legislation leads to the conclusion that Kazakhstani legislators should take seriously the scope and complexity of the right to privacy as well as how it relates to other rights and freedoms. The nation requires a high-quality law that safeguards personal data during profiling and targeted advertising, providing for clear responsibilities of owners and operators of personal databases.

Keywords: quality of law; profiling; targeted advertising; personal data; GDPR; anonymity; identification; automated data processing; artificial intelligence.

Introduction

In modern Kazakhstan, digitalisation has affected all spheres of life – education, healthcare, financial and insurance services, employment, social and pension security, public services, commercial relations, and other relations. Citizens actively interact with commercial organizations, e-government, and society. In this regard, protecting personal data has acquired great importance from a legal point of view.

The Constitution of Kazakhstan has radically changed the priority of protection from state interests to human rights and freedoms, representing the state's highest value [1]. The Law of the Republic of Kazakhstan 'On Personal Data and Their Protection' (hereinafter referred to as the 'Personal Data Law'), adopted in 2013, ensures further implementation of Article 18 of the Constitution on the protection of the right to personal inviolability, respect for private life and the protection of personal data [2]. Since 2013, the state has been enhancing the protection of personal data subjects by revising the legislation. In September 2023, the Law of Kazakhstan, 'On Online Platforms and Online Advertising' (hereinafter referred to as the 'Online Advertising Law'), introduced new concepts of profiling and targeted advertising in Kazakhstan [3]. However, the new law contains problems protecting personal data in the Republic of Kazakhstan. The new law does not establish strict rules for the protection of personal data, is unclear and vague, contains broad provisions on targeted advertising and profiling, and creates risks to the citizens' rights and freedoms. Moreover, no explicit provisions exist on profiling and targeted advertising in the Personal Data Law. Unfortunately, the draft Digital Code also does not clarify or eliminate the risks that profiling and automated data processing entails for human rights and freedoms and, in some cases, for the safety of society [4].

Materials and methods

The research in this article aims to identify the problems of the fragmented regulatory framework for profiling and targeted advertising in Kazakhstan, insufficient protection of personal data subjects, and problems in interpreting the right to privacy by the legislative authority and the authorised data protection body. The article focuses on comparing the provisions of the EU General Data Protection Regulation ('GDPR') and Kazakhstani legislation, acts of the European Data Protection Board, opinions of Western scientists and decisions of the European Court of Human Rights (hereinafter referred to as the ECHR) [5].

Research objectives are:

- to identify gaps in Kazakhstani legislative regulation of profiling and targeted advertising as types of personal data processing.
- to identify problems in the legislative protection of the rights of personal data subjects and demonstrate the possible consequences of profiling and automated data processing for fundamental human rights and freedoms.
- to offer recommendations for improving legislation in personal data protection.

The study was prepared using general scientific and specific research methods. Thus, the authors used the methods of analysis and synthesis, the method from the general to the particular,

the system method, and the comparative method. Authors also conducted a comparative analysis of the regulation of profiling and targeted advertising in Kazakh and European legislation on the protection of personal data, studying and comparing the legal provisions on profiling and targeted advertising, their content, and quality.

The distinction between the Kazakh and European approaches to the classification and content of profiling as a form of personal data processing, as well as the rights of personal data subjects, and the responsibilities of controllers and data operators are demonstrated by the comparison of statutory requirements. An examination of Western scientists' research shows a strong link between profiling and behavioural advertising and interference with a person's privacy, rights and freedoms. The opinions of Western scientists allow us to conclude that Kazakh legislators need an adequate understanding of the content of the right to privacy. The discovered difference between Kazakh legislation and European regulation creates risks of abuse of profiling technologies and illegal use of personal data in Kazakhstan, causing harm to the individual and his or her interests.

We will consider how targeted advertising and profiling violate the right to privacy (respect) of private life, compare the approaches of Kazakhstani legislation and the GDPR, and consider Western scientists' opinions on targeted advertising and profiling. Finally, we will provide recommendations for improving national regulation in Kazakhstan.

Discussion

Before we consider the problems of the current Kazakhstani regulation, it is essential to remember that private life is a broad concept recognised by scholars, legislators, regulators and courts in many countries. In Europe, the decisions of the ECHR reveal the content and interpretation of the right to respect private life and the law enforcement practice to ensure this fundamental right. The ECHR has firmly established that private life is a broad term that is not restricted to an 'inner circle' and includes the right to lead a 'private-public life', that is, the ability of an individual to develop his or her social identity, to approach others to establish and develop relationships with them [6; 7:§70]. According to the ECHR, the concept of 'private life' also includes activities of a professional or business nature or activities taking place in a public context and multiple aspects of a person's physical, social and personal identity, including reputation [7:§71; 8:§§130,131; 9:§102; 10:§87].

The broad interpretation of the right to respect private life has led to a broad understanding of personal data. Article 4(1) of the GDPR does not give an exhaustive definition of personal data. It encompasses any information that may be utilised to identify a natural person, either directly or indirectly, such as a name, identification number, location data, an online characteristic unique to that person's genetic, physical, physiological, mental, economic, social or cultural identity.

On the Internet, a user profile is created utilising the data stipulated in the GDPR under the notion of personal data. This includes information on purchases, preferred products and brands, frequently ordered products, medications or supplements, preferred travel destinations, hotel accommodation preferences, literary preferences, film preferences, search queries, and other information. A person's entire 'life' on the Internet, carried out through applications and a web

browser, is a vast data bank about a person, which other persons use for their purposes or benefits.

Google's search engine is a 'Database of Intentions' with 'unfettered access to [users] interests, needs, desires, fears, and pleasures... [and] information that is medical, financial, sexual, or otherwise intimate in nature' [11:22]. In the Internet, Google has become a pioneer in creating user profiles using and analysing user data and actions on the Internet. Google 'kicked off the surveillance economy' by transforming its advertising business and improving its services to gain more from users' data [12:19; 13:650-652]. Today, based on personal data, all players in the advertising ecosystem create a 'sophisticated' user profile, which is placed like a commodity in an automatic auction for advertisers [13:651, 14:36].

Like the Internet and mobile devices, mobile apps have become necessary in modern society. Users spend significantly more time on mobile apps and the Internet, meaning that 'non-human observers' in the advertising ecosystem constantly monitor the user, covertly collecting and exchanging personal data [15:356]. The amount of personal information provides 'unprecedented knowledge of the minutiae of our daily lives', and a person who is tracked and observed 'can become an extremely well-known citizen' or a 'transparent citizen' [15:357,359; 11:22]. Profiling algorithms allow 'knowing people better than they can know themselves' [16:3].

Thus, the collected personal data allows us to understand what a person is like, their character, habits, lifestyle, and economic and social status; in other words, to identify and determine aspects of the user's private life. Understanding the profile of Internet users allows online service and product providers to target their customers, making more accurate offers through targeted advertising. The latter increases the chances of making more profit and providing users with the desired benefits. However, some users consider product and service recommendations undesirable and aggressive [17:23].

What forced Kazakhstan to adopt the Online Advertising Law? In our country and around the world, the Internet has become a source of income for many, and along with the advantages that the Internet, platforms and social networks have created for selling goods and services, the risks and threats to individuals have increased. The growing influence of social networks and the dissemination of false advertising of goods and services, including financial services, by famous personalities through their media channels and blogs have led to severe financial damage [18]. Kazakhstanis lost more than 8 billion tenge due to the actions of fraudsters and financial pyramids in 2022, and in 2023, the damage reached more than 144 billion tenge [19, 20]. The state focused on the lack of 'effective mechanisms for user interaction with online platform owners to restore violated rights' [21]. Therefore, the Online Advertising Law introduced the user's right to file a complaint with the owner of the online platform regarding the content in order to regulate the distribution of content through online platforms. The legislator took as an example the Western procedure of notification and content removal ('notice-and-take-down') and the procedure for interaction between the user and the online service provider. The law provided the user's rights and obligated the online platform owner to determine the mechanism and procedure for filing a complaint and to respond to the user's complaint. Non-transparent advertising and the 'impressive capital' 'earned' by bloggers from advertising goods

and services, including financial pyramids, bookmakers and gambling, became another reason for the state to adopt the new law [22]. In other words, the state also aimed to regulate the shadow market of online advertising and replenish the budget.

To regulate the interaction between users and owners of online platforms and replenish the budget, the legislator included profiling and targeted advertising in the Online Advertising Law 'by inertia', following the global trend of European regulations reception. The Kazakhstani Online Advertising Law did not aim to regulate profiling and targeting in the context of protecting the right to privacy of individual and personal data [23]. Kazakhstani legislators should have considered the experience of regulating profiling and targeting following the example of the GDPR. In addition, the clear and specific provisions of the European Digital Services Act (DSA) were left without due attention, stating that the DSA clarifies and supplements the provisions of the GDPR on the protection of personal data, requires strict compliance with the GDPR [24: Recitals (10), (68), Art. 2.4(g)]. The Online Advertising Law and the Personal Data Law contain vague provisions on profiling and broad obligations of online platforms and other online advertising entities about users' rights.

The National Chamber of Entrepreneurs 'Atameken' expressed the opinion that there is no need for the Online Advertising Law, on inconsistency in state regulation [25] However, the legislator did not move away from the inconsistent approach to regulate profiling and targeted advertising and did not consider the harm and risks to fundamental human rights and freedoms.

As a result, a fragmented and vague regulation of profiling and targeted advertising was formed in Kazakhstan, consisting of three main laws: the Law on Personal Data, the Law on Informatisation, and the Online Advertising Law [26: Art. 36].

The Personal Data Law contains general conditions for all types of personal data processing, such as the data subject's consent, compliance with the requirements for data minimisation, purpose limitation and storage. However, the Personal Data Law and the Online Advertising Law do not directly indicate that profiling is a type of data processing or an action to use data. They do not contain specific requirements for collecting data and performing profiling. Article 1.15) of Online Advertising Law defines profiling as a set of algorithms to determine the user's preferences and (or) interests.

The above provisions of the Kazakh laws clearly show two essential differences from the GDPR. Firstly, the GDPR explicitly states that profiling is any form of automated processing of personal data. Secondly, the GDPR contains more specific provisions on what information and identifiers, what aspects of a person's life and how are used to identify or distinguish an individual and their preferences. According to GDPR an individual's online information, identifiers and online 'traces' are used to create ideas about individuals 'performance in the workplace, their financial standing, health, individual preferences, interests, trustworthiness, behavior, location and movement' [5, Recitals (30), Article 4(4)]. Unlike the GDPR, the Kazakh laws on profiling and personal information used in profiling remain unclear. This allows data controllers and operators to interpret the laws and act at their discretion, which could jeopardize an individual's rights and freedoms.

In addition, Kazakhstani data subjects have weaker protection and poorer rights than European individuals. For example, under GDPR the data subjects must be made aware that

automated decision-making even exists and about the expected outcomes of such processing [5: Recital (63), Art. 15(1)(h)]. The Kazakhstani Personal Data Law does not provide for such a right of an individual, and the Informatization Law obliges to inform a data subject about automated decision-making only if it creates, changes, or terminates the rights and legitimate interests of the data subject [26: Art. 18-1, 36]. The law does not specify how the controller and the operator determine such consequences for an individual. Thus, the controller and the operator have discretion and may not inform a data subject who has an imperfect right to access and transparency. The GDPR also grants data subjects the ability to object to profiling and to prohibit processing for direct marketing purposes. It is the responsibility of the controller and the operator of personal data to clearly and explicitly state the subject's right to do so [5: recitals (70), Art. 21(1)-(3)]. Kazakhstani data subjects do not have the right to object to any data processing, and controllers and operators of data do not have corresponding duties. Additionally, data controllers are not obligated under Kazakhstani legislation to evaluate how processing personal data affects individuals, ability to exercise their rights and freedoms, and the likelihood of potential legal consequences [5: recitals (91), Art. 35(3)(a)].

Next, let us compare the Kazakhstan and European regulations of targeted advertising, the purpose of which is to identify as accurately as possible the right target person to make a specific commercial offer and push him to a decision that is beneficial to the advertiser. Such targeted advertising infringes on privacy more aggressively than advertising directed at a vast, undefined circle of people. Article 1.16) of the Kazakhstani Online Advertising Law provides only a definition of targeted advertising. It does not establish additional provisions, clarifications, specific requirements, rights or obligations for implementing targeted advertising. Although the GDPR does not provide a separate concept of targeted advertising, it expressly requires compliance with the provisions on the collection and processing of data based on the profiling and characteristics of a person and his behavior on the Internet. The GDPR expressly states that profiling may cause material or non-material damage, including discrimination, damage to reputation, denial of financial resources or employment, and deprivation of other rights and freedoms of an individual [5: recitals (71), (75)]. The GDPR obliges to comply with its principles and requirements if the activity of processing personal data is related to monitoring the behavior and tracking of an individual on the Internet [5: Art. 3(2)(b)].

Moreover, the independent European Data Protection Advisory Authority, the European Data Protection Board (EDPB), in its guidelines, indicates how the targeting of social media users leads to discrimination, manipulation of users and the undermining of individual autonomy and freedom, undue influence on the participation and opinion of an individual in political processes, risks for socially vulnerable persons, risks for consumers and competition and other adverse legal consequences for an individual. The EDPB also clarifies the functions of all persons involved in public relations in the targeting process and explains the liability measures in case of a law violation [27]. Unlike European legislation, Kazakhstani laws define separate authorized bodies to regulate online advertising and personal data protection. Kazakhstani authorized bodies do not issue acts supplementing and clarifying the rules on profiling and targeted advertising nor protecting personal data.

The Kazakh legislator must carefully weigh the global experience and the gravity of the threats and risks of profiling and targeted advertising for fundamental human rights and freedoms while adhering to current technological developments, not simply hastily passing laws. Kazakh legal science has not studied the impact of information technology on human rights. In this regard, it should consider the best legislation, law enforcement practice and the opinions of Western legal scholars, which we will move on to below.

Foreign scholars agree that targeted advertising and profiling invade privacy because they are 'fraught with intrusive data practices' and subject a person to constant surveillance and tracking to identify the user's identity and influence his or her behavior and choices [28]. However, commercial players believe there is no invasion of privacy since, in many cases, anonymous and pseudonymized data are used, which provide an idea of the user's behavior on the Internet without precisely identifying him or her. Therefore, there is no violation of data protection laws.

However, most scholars argue that tracking and analyzing a user violates privacy since even using 'nameless data', 'single-out data', or 'neutral data', controllers and processors identify a specific person from among a crowd [29:17,31; 8:§136]. The process of 'singling out a person implies identifying this person, even if ...a name [cannot be tied] to the data processed about an individual' [29:17]. Today, with the help of technical tools, including artificial intelligence technologies, even well-anonymized personal information from various sources makes it possible to identify and highlight an unknown person [13; 30:147; 31:205, 206; 32; 12:13]. In the online environment, 'everything becomes information', and 'in the context of a 'smart' environment, data will always relate to people' [31:199,202]. Pieces of information that a user leaves on the Internet 'that are not identifiable can become identified' and 'almost uniquely' and 'unambiguously' identify a person [33:1891; 14:37].

The Internet user becomes an object of attention, a possible target consumer, identified through collecting and analysing information about the user. Moreover, 'information gathering [about a person] results in a loss of anonymity' [30:147]. Anonymity, as the lack of the ability to be identified or to be an object of attention, is an essential element of privacy [34:7]. Purtova defines anonymity as the opposite of identification and the 'unreachability' of the individual. She distinguishes a type of 'T-identification' (targeted identification), which leads to unique characterisation (identification) of a person [35:168-170]. According to her position, the goal of targeting is pure individuation and personalisation [35:169,170,172]. Using purely personal items, such as mobile devices, allows for better user identification [36:472]. Kuner believes that modern technical capabilities for identifying a person 'may call for recognizing a fundamental right of anonymity' [32].

Thus, the ability to be reachable, recognizable, and monitored by someone means a loss of anonymity. Suppose an individual is profiled and targeted due to information collected about them. In that case, they cannot remain completely anonymous; they have lost control over their personal information, so their privacy has been invaded. Any tracking and surveillance, whether by a state, a business, or an individual, the elicitation of information and the acquisition of data without the knowledge of the subject who has a reasonable expectation of privacy, represents a violation of privacy [7: §73].

In addition to the loss of anonymity, profiling and targeting technologies invade person's autonomy, which underpins the right to safeguard personal data and is one of the functional features of personal integrity [37:9; 36:460]. Western scholars define autonomy as 'the desire to avoid being manipulated or dominated wholly by others', to act freely in own interests, make fully own independent decision [34:33, 12:36]. Autonomy consists of person's true choice without 'being manipulated, gulled, brainwashed, or conditioned into making them [choices]' [37:34].

Western scientists and regulators agree that profiling and targeted advertising aim to identify a person, encourage them to make a certain decision and influence their behavior. At the same time, changing a person's behavior in any sphere of life is possible: commercial, political, or social. Profiling information from Facebook, Google, and other apps allows to identify person's behavioral traits, thus creating behavioral profiles of people and influencing them [38:80; 12:37]. Scientists note that 'the code' and algorithms engineer the rational human behavior to achieve certain goals, determine what to watch, read, and think for a person, and 'act in ways [they] would not have chosen otherwise', including political campaigns [16:161; 39:51; 36:460; 40]. Professor Solove emphasizes that 'autonomy harm involves limiting, undermining, suppressing, or undue influence on people's choices so that people are either directly denied the freedom to make decisions or are deceived into thinking that they are free to make choices' [41:845].

Modern technologies of targeted advertising and profiling, including artificial intelligence technologies, impact other fundamental rights and freedoms and can harm human dignity, reputation and other fundamental human rights and freedoms [16:6]. Besides the threats to reputation, the new media and technologies, the rapid spread of information today and its easy accessibility have raised the stakes, in the form of cyberbullying and 'revenge porn' but also lost jobs and school disciplinary proceedings [15:361]. European data protection authorities emphasize that targeted advertising and profiling can reinforce and 'perpetuate existing stereotypes and social segregation' and increase the risk of bias, violating the right to non-discrimination [42; 43:13].

Existing laws provide for traditional discrimination (e.g. race, colour, gender, language, religion, political opinion), but current 'algorithmic discrimination is based on blurrier, less clear-cut categories' [44:765]. Today, discrimination also affects 'the consumer role of an individual in a commercial sector' [36:459]. According to Mantelero, profiling algorithms also pose serious risks 'to the right to education, equality before the law, freedom of movement, freedom of expression, assembly and freedom in the workplace' [44:762]. The modern development of artificial intelligence technologies gives rise to other problems. Sætra warns the generative AI 'will be increasingly adept at persuasion, and that this will easily cross into the domain of manipulation', including manipulating human behavior and perceptions that could lead to serious human [and societal] harm' [45:3].

Discriminatory practices based on profiling can have negative socio-political consequences. Since profiling is associated with automated data processing, the 'code' can be programmed or used to organize clusters for economic, social, and even political purposes. Segregation or filtering of individuals based on specific personal and behavioral characteristics is convenient for employers when selecting candidates, for public organizations when promoting particular

social and political interests, for the state when resolving issues of social security, when providing insurance or loans, medical treatment, offering special groups of goods and services.

Profiling has the discriminatory effect of targeting in employment and society's social and political life [15; 46]. Political campaigns disseminate 'convenient' information to target and influence the electorate, thus manipulating the right to information and undermining democracy. Targeting techniques 'increase polarization of the electorate and identify and target weak points' and manipulate people's perceptions and beliefs [40:349; 12:37]. Personalization and targeting pose a threat not only to democracy and free society but also to national security since uncontrolled access to personal data allows 'identify potential targets to recruit them as spies' [12:46-54]. Users do not know who is hiding behind the 'code' and profiling techniques. Can societies and governments be confident that profiling and targeting techniques are not used by criminal and terrorist elements to influence socially unstable individuals and teenager to the detriment of human rights, law and order, national security and the sovereignty of states?

Results

The substance of the data protection legislation is critical in both the public and private sectors. Kazakhstan should adopt more comprehensive and precise rules for collecting and processing personal data and regulate profiling and targeted advertising in more detail at the legislative level. Profiling and targeting techniques are used in commodity-money relations and beyond and carry risks for other human rights, society and the state.

The concept of 'personal data' in Personal Data Law requires clarification, including data relating to an individual about his or her race or ethnicity, political opinions, religion, philosophical views, belonging in professional and public organizations and unions, information about their performance at workplace, financial standing, health, personal desires, reliability or behavior, movements or location, one or more characteristics of their physical, physiological, mental, financial, social or cultural identity. The Constitutional Court of the Republic of Kazakhstan has identified these elements and integral characteristics of private life [47: paragraph 2]. The Kazakhstani Constitutional Court noted that a person manages and controls information about himself or herself and determines what information he or she would like to keep secret and restrict access to it. Article 12 of the Constitution establishes that human rights and freedoms determine the content and application of laws and other regulations; human rights and freedoms have priority over the rights and interests of the state and society, especially over commercial interests and entrepreneurial gain. The state must ensure the implementation and protection of this right to privacy and the right to control information about oneself.

Today, the Kazakhstani Personal Data Law does not contain the concept of profiling and does not classify profiling as a type of personal data processing or use. The Personal Data Law defines 'personal data use' in general, meaning actions with personal data intended to accomplish the objectives of the personal database owner, operator, and a third party. Thus, the Law hides profiling operations in the concept of 'personal data use' and gives high importance to the interests of the owner, operator and third-party, leaving behind the individual's rights and interests.

In this regard, the state should introduce a clear concept of ‘profiling’, similar to that specified in the GDPR. The law should establish the grounds, cases and procedures for collecting and using information about an individual for profiling and dissemination of targeted (behavioral) content both for commercial and any beneficial purposes, excluding the risks of harm to other human rights and freedoms, the constitutional order, law and order and national security of the state.

Additionally, the legislator ought to define ‘processing’ in the Personal Data Law in a way that is more in line with the GDPR’s definition and the Kazakhstani Constitutional Court’s resolution. Legislators also should make it clear in the Online Advertising Law that profiling and monitoring peoples’ online activities constitute personal data processing.

To improve the protection of the data subject, the state should supplement the data subject’s rights with the right to know about the existence of profiling and automated processing of data and automated decision-making, as well as the anticipated consequences of such processing. In addition, for the data subject to effectively exercise their rights, the legislator should supplement the duties of the data controller and the data processor with the following obligations:

- notify about the existence of automated processing and automated decision-making, including profiling.
- obtain informed consent for the collection and processing of data, specifying the types of processing, including profiling and online monitoring.
- establish a hotline or appoint a data protection officer to resolve data subjects’ requests, including raising their awareness.
- implement (build) into software, products, mechanisms and technical features (privacy-by-design) that allow an individual to control and decide what information about themselves they agree to disclose and use for profiling and targeted advertising.

Conclusion

A study of the opinions of Western scientists and a comparison of European and Kazakhstani regulation of profiling and targeted advertising demonstrated gaps in Kazakhstani legislation, as well as insufficient and vague regulatory consolidation of the terms ‘personal data’, ‘profiling’ and ‘personal data processing’. It also revealed the absence of some duties of controllers and data operators in connection with profiling and the absence of legislative mechanisms for implementing individual control over the access and processing of personal data. The legislative body underestimated the possible consequences of profiling for fundamental human rights and freedoms, as well as for law and order, constitutional order and national security.

The Republic of Kazakhstan’s Constitution states that the state’s greatest value is the individual and his rights and liberties. The legislative, executive and judicial branches must ensure their application and protection. The adopted laws have the most crucial role since it is the law that establishes norms and rules for all members of society. In the modern conditions of high-tech life, laws protecting personal data can increase citizens’ awareness and ‘form a protective shield for the individual against an increasingly intrusive world’ [15:165]. However, the current Kazakhstani legislation does not pay due attention to the regulation of profiling and targeted advertising, does not establish clear and distinct obligations for owners and operators

of personal databases and third parties, as well as the necessary rights for data subjects, provisions that improve the population's digital and legal literacy while establishing conditions for control over the personal information processing.

In this regard, the critical role of the lawmakers is to formulate clear and precise regulations. The ECHR stresses the law's quality in numerous rulings. The ECHR emphasizes that 'the purposes of personal data processing, expressed in vague terms may lead to broad interpretation. It is crucial to establish clear and detailed regulations that define the scope and application of these measures, alongside minimum safeguards regarding duration, storage, usage, third party access, and protocols for maintaining data integrity and confidentiality, as well as destruction procedures, thereby ensuring adequate protection against potential abuse and arbitrariness' [48: §99].

Furthermore, in addition to administrative and criminal liability, the law must also provide severe civil liability measures 'designed to secure respect for private life even in the sphere of the relations of individuals between themselves' [49:§3; 10:§110]. Civil law must recognize privacy harms without establishing damage, the need for its justification of proof. The law must convey that privacy violations matter and 'provide lessons for wrongdoers'. It is an unambiguously formulated law that will form a society culture where people will be confident that their privacy 'will not be ignored' by either companies or society [41:829]. A comprehensive law will also ensure that the state and its authorized bodies fulfil their obligations to protect the constitutional right to privacy, embracing the protection of personal information. The Kazakh government has showed strong political commitment will and investment' in advancing the nation's digitalization and enhancing the protection of human rights [50]. For example, the creation of new bodies such as the cyber police and the anti-fraud center are aimed at combating Internet fraud, which in 26% of cases is the result of unauthorized access to citizens' personal data. Fraud of citizens related to online services, loans, and online purchases in 2024 resulted in damages of 11.4 billion tenge, almost 3 times higher than in 2023 [51]. However, this indicates that privacy threats remain, and the legal framework, including the draft of the new Digital Code, is still far from thoroughly regulating the processing of personal data, including profiling and targeted advertising.

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The contribution of the authors

Akhmetova S. collected materials on the research topic, including international experience in regulating profiling and targeted advertising, examined the case-law of European Court of Human Rights, analyzed the problem, and summarized the study's results.

Kassymzhanova A. determined the research methodology, analyzed the risks of targeted content dissemination for national security, participated in preparing a literature review, introduction, and conclusion on the research topic.

Ibrayeva A. defined the goals and objectives that formed the central part of the study, participated in analyzing the invasion of privacy and risks for human rights and freedoms.

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Жасанды интеллект технологияларының заманауи дамуы және Қазақстанда профайлинг және таргеттелген онлайн-жарнаманы құқықтық реттеудің мәселелері

Аннотация: Қазақстанда 2023 жылы «Онлайн-платформалар және онлайн-жарнама туралы» Заң қабылданды, оның негізгі мақсаты Интернеттегі жарнаманы реттеу болып табылады. Заң нормалары дербес деректерді қорғау туралы заңнаманың жалпы нормаларымен шектеле отырып, профайлинг және таргеттелген жарнама кезінде дербес деректерді толық қорғамайды. Оның үстіне қазақстандық заңдарда профайлинг, микротаргетинг және жасанды интеллект

технологияларының негізін құрайтын деректерді автоматтандырылған жинау, талдау және өңдеу нақты реттелмеген.

Мақалада профайлинг пен таргеттелген жарнаманың қазақстандық және еуропалық стандарттары салыстырылады. Профайлинг және таргеттелген жарнаманың адамның жеке өміріне, автономиясы мен бостандығына қалай қол сұғатыны және басқа да негізгі жеке құқықтары мен бостандықтарына қауіп төндіретіні туралы Батыс ғалымдарының көзқарастары зерттеледі. Мақалада дербес деректерді қорғау туралы қазақстандық заңнамада профайлинг пен таргеттелген жарнаманың дәлме-дәл реттелмегендігі сыни тұрғыдан бағаланады.

Мәселені еуропалық заңнамамен салыстырмалы талдау қазақстандық заң шығарушылар жеке өмірге қол сұғылмаушылық құқығының кеңдігі мен тереңдігін, оның басқа құқықтар және бостандықтармен байланысын ескеруі керек деген түйін жасатады. Елге профайлинг және таргеттелген жарнама кезінде дербес деректерді қорғайтын, дербес деректерді қамтитын базаның меншік иелері мен операторларына нақты жауапкершілікті қамтамасыз ететін жоғары сапалы заң қажет.

Түйін сөздер: заң сапасы; профайлинг; таргеттелген жарнама; дербес деректер; GDPR; анонимдік; сәйкестендіру; деректерді автоматтандырылған өңдеу; жасанды интеллект.

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Современное развитие технологий искусственного интеллекта и проблемы правового регулирования профилирования и таргетированной рекламы в Казахстане

Аннотация: В 2023 году в Казахстане был принят Закон «Об онлайн-платформах и онлайн-рекламе», основной целью которого является регулирование рекламы в интернете. Закон не в полной мере защищает персональные данные при профилировании и таргетированной рекламе, ограничиваясь общими нормами законодательства о защите персональных данных. Более того, казахстанские законы ясно не регулируют автоматизированный сбор, анализ и обработку данных, которые составляют основу профайлинга, микротаргетинга и технологий искусственного интеллекта.

В статье сравниваются казахстанские и европейские нормы профилирования и таргетированной рекламы. Рассматриваются мнения западных ученых о том, как профилирование и таргетированная реклама вторгаются в частную жизнь, автономию и свободу человека и представляют угрозу другим основным правам и свободам личности. В статье критически оценивается отсутствие адекватного регулирования профилирования и таргетированной рекламы в казахстанском законодательстве о защите персональных данных.

Сравнительный анализ проблемы с европейским законодательством приводит к выводу, что казахстанским законодателям следует учитывать широту и глубину права на неприкосновенность частной жизни и его связь с другими правами и свободами. Стране необходим качественный

закон, защищающий персональные данные при профилировании и таргетированной рекламе, предусматривающий четкие обязанности владельцев и операторов баз персональных данных.

Ключевые слова: качество закона; профилирование; профайлинг; таргетированная реклама; персональные данные; GDPR; анонимность; идентификация; автоматизированная обработка данных; искусственный интеллект.

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