



## Malgorzata Chojara-Sobiecka

Pontifical University of John Paul II in Cracow, Poland

<https://orcid.org/0000-0003-2498-6735>

## Piotr Kroczek

Pontifical University of John Paul II in Cracow, Poland

<https://orcid.org/0000-0002-6872-2953>

# Personal Data Protection as an Expression of Personalism

**Abstract:** Human-related issues are the objected personalism. One of the current problems temporarily recognized and widely known is data protection. The article aims to present a mutual connection between legal regulations of data protection, taking under consideration GDPR, and personalism. The conclusion is that there are many elements in legal regulations that justify the conviction that the protection of personal data can be seen as an expression of personalism.

**Keywords:** data protection, personalism, Karol Wojtyła, GDPR

## Personalism as a Universally Applicable Idea

Karol Wojtyła worked on the issue of the human person, among others, from the point of view of philosophy. The result of this work is the book entitled *The Acting Person*. Karol Wojtyła was fully aware that the results of his research may have also a vital significance for the theology. The author, certainly acquainted with the principle of *philosophia ancilla theologiae*, believed that the philosophical view of a man as a person is a preparation of the basis for taking up personalistic issues in the field of theology. At the same time, the author in question pointed out that personalistic issues are not limited to philosophy or theology, but they have a universalistic meaning. The personalistic viewpoint

is of paramount importance for every human being and for the entire, ever-growing, human family in the contemporary world.<sup>1</sup>

There is a very close connection between the real person and the main object of interest in personalism. All it takes is the presence of a human being in some area of reality and this is already drawing on the reflection concerning him as a person. The connection has at least two consequences. First of all, considerations based on personalism are never a pure theory, but they touch upon human life. Secondly, the personalistic approach will apply to each and every problem, even the smallest one on whose horizon a person is even hardly visible.

The number and complexity of these human-related problems, also legal ones, turns out to be increasing over time. They are caused also by the development of various new technologies and new fields of science or law. One of the causative factors is the issue of personal data protection. Personalism must also face a new topic. As one of the principles of legislation teaches, law, to be accepted by the addressees of the law, should be aimed at specific people in their current situations. Law cannot be a relict without a touch with the current affairs.<sup>2</sup> The idea of making a law that is close to man can be called the personalism of the law.<sup>3</sup>

This article aims to present the link between personal data protection law and personalism, namely to prove that this regulated protection can be seen as the result of personalism.

## Too Narrow and Proper Outlook on the Data Protection

The protection of personal data can only be seen as a purely technical legal directive that requires designated entities to perform certain formalities related to the processing of personal data and to carry out certain formalities connected with the processing of personal data, for example, the execution of the obligation to inform the data subject,<sup>4</sup> determination of the scale of risk connected with

---

<sup>1</sup> Karol Wojtyła, *Osoba i czyn* (Kraków: Polskie Towarzystwo Teologiczne, 1969); Karol Wojtyła, *The Acting Person*, trans. Andrzej Potocki, 18, <https://www.scribd.com/doc/57487848/The-Acting-Person>, accessed October 28, 2020.

<sup>2</sup> Piotr Kroczyk, *The Art of Legislation: the Principles of Lawgiving in the Church* (Kraków: Unum Publishing House 2017), 229.

<sup>3</sup> Cormac Burke, "Renewal, Personalism and Law," *Forum* 7 (1996): 327–340.

<sup>4</sup> Article 12, 13, and 14 of the 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

the processing of data,<sup>5</sup> provision of technical or organizational measures to ensure the security of the processing of such data.<sup>6</sup> These formalities imposed by law are sometimes assessed in the context of European law (GDPR) as unnecessary formalisms that only complicate people's lives and the functioning of institutions or business entities. From this point of view, the rules given in GDPR—when they are misinterpreted or misapplied and when they that even paralyze the proper functioning of society—are so-called “the absurdities of GDPR.”<sup>7</sup> The protection of personal data is therefore seen only as a product of administrative idealism, which is a tendency to unquestionably arrange the world according to artificial legal rules.

This outlook on the data protection problem is too narrow, and it is for at least several reasons. First of all, personal data always concern a particular person, that is, his/her characteristics or the circumstances of his/her functioning. As a consequence, the protection of personal data can also be examined from a personalistic perspective. Secondly, the protection of personal data is an element of human protection by declaring and formulating various human rights—as the title of the GDPR states: “on the protection of natural persons concerning the processing of personal data.” The basis of these rights is human dignity, which is inalienable and inviolable. This human dignity is one of the main elements of personalism.

## Data Protection as an Element of the Right to Privacy and Human Dignity

Looking at the issue of personal data protection in a more detailed way, it should be noted that the protection of personal data is related to the right to privacy. This right is widely recognized and guaranteed in international and other normative acts, such as European or Polish.<sup>8</sup> Its basis, as well as the basis of other

---

of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) *Official Journal of the European Union*, L 119/1, 04.05.2016—herein referred to as GDPR.

<sup>5</sup> Article 24, 25, 32 and 35 of the GDPR, and also 27, 30, 33, and 34.

<sup>6</sup> Articles 25, 28, and 32 of the GDPR.

<sup>7</sup> See examples: <https://bezprawnik.pl/absurdy-rodo-10-najwiekszych/>, <https://www.prawo.pl/biznes/absurdv-w-rodo-debata-prawopl.319431.html>, accessed October 28, 2020.

<sup>8</sup> For instance, Article 17 of the International Covenant on Civil and Political Rights, Article 8 of the European Convention on Human Rights (formally the Convention for the Protection of Human Rights and Fundamental Freedoms), Article 7 of the Charter of Fundamental Rights of the European Union, Article 47 of the Constitution of the Republic of Poland of April 2, 1997.

human rights, is human dignity. Personal data protection, although having origin in the right to privacy, today functions alongside it as a full-fledged separate legal institution.<sup>9</sup>

Data protection, privacy, and dignity are clearly and mutually connected, for instance: the collection of geolocation data, information about the web pages visited using a given profile on the Internet, whether access to a phone call log can result in control over a person's life, preferences as a consumer, ways of spending free time or work, the identity of callers, etc. Too easy access to this personal information violates not only private life, but also the sense of dignity, integrity, and self-determination.

A human being cannot be the subject of commercial transactions, so why his data, sometimes very detailed, can be? One can say that situation when data is sold or exchanged is some kind of slavery.<sup>10</sup> At some point, this problem started to be noticed in the past. The development of technology made it possible to obtain more data, combine them into logical sequences from different sources and transfer between different entities. The answer to this problem in the international level, after long time of studies and theoretical disputes, was *The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*<sup>11</sup> known as "Convention No. 108" by Council of Europe. This treaty purpose is "to secure in the territory of each Party for every individual, whatever his nationality or residence, respect for his rights and fundamental freedoms, and in particular his right to privacy, with regard to automatic processing of personal data relating to him ("data protection")" (Article 1).<sup>12</sup>

---

<sup>9</sup> In the Charter of Fundamental Rights of the European Union they are stipulated simultaneously—the right to privacy in Article 7 and the right to the protection of personal data in Article 8.

<sup>10</sup> See: Michał Duszczyk, "W Darknecie handlują danymi i tożsamościami. Zaskakujące ceny," <https://cyfrowa.rp.pl/it/49567-nielegalny-handel-danymi-osobowymi-kwitnie-w-darknecie-zaskakujace-ceny>, accessed January, 2 2021.

<sup>11</sup> <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108>, accessed October, 28 2020.

<sup>12</sup> The process of examining the degree of protection of the right to privacy by the European Convention on Human Rights and the internal law of the Member States and the conclusions drawn at each stage are described on pages 1–6 of the Explanatory Report to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Strasbourg, 28.01.1981, <https://rm.coe.int/16800ca434access29.12.2020>, accessed October 28, 2020.

## Definition of Personal Data as an Expression of Personalism

Continuing the reflection on personal data protection from a personalistic perspective, it is worthwhile to look at the very definition of personal data contained in Article 4 point 1 of the GDPR. *Nota bene* this definition has been received to other legal systems, including the law of the Catholic Church, and it is applied *mutatis mutandis* in them.<sup>13</sup>

At the beginning of the analysis of this definition, it should be noted that there is no enumerative list of which specific information constitutes personal data. The information must have the following characteristics:

1. information (any message, image, sound, smell, or other data in any form);
2. any form (regardless of its type, form or technical medium on which it is contained, true or not);
3. subject (a consistency that indicates that information must relate to a specific sphere of reality);
4. concerning an individual;
5. data reference, that is:
  - a) identified (one whose identity we already know)
  - b) or identifiable:
    - i. directly (through her name or other information that will be sufficiently distinctive in the given facts), whether
    - ii. indirectly (when the data form a “unique combination” to identify a person and distinguish him/her from others).

The definition of “personal data” constructed in this way allows for an individual approach to a given factual situation. It is always necessary to assess in a specific situation whether given information allows to identify a person or not. In some situations, the name alone will be able to identify a specific person (e.g., when the group is small or the name is original), while in others the name

---

<sup>13</sup> See, for example, Article 5 (1) of Dekret ogólny w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych w Kościele katolickim wydany przez Konferencję Episkopatu Polski, w dniu 13 marca 2018 r., podczas 378. Zebrania Plenarnego w Warszawie, na podstawie kan. 455 Kodeksu Prawa Kanonicznego, w związku z art. 18 Statutu KEP, po uzyskaniu specjalnego zezwolenia Stolicy Apostolskiej z dnia 3 czerwca 2017 r., *Akta Konferencji Episkopatu Polski* 30 (2018), 31–54, and Article 2 point 1 of Conferenza Episcopale Italiana, Decreto generale *Disposizioni per la tutela del diritto alla buona fama e alla riservatezza* (21–24.05.2018), <https://www.chiesacattolica.it/wp-content/uploads/sites/31/2018/05/25/Decreto-generale.pdf> (25.04.2020), or Article 4 point 1 Gesetz über den Kirchlichen Datenschutz (KDG) in der Fassung des einstimmigen Beschlusses der Vollversammlung des Verbandes der Diözesen Deutschlands vom 20. November 2017, <https://www.erzbistum-muenchen.de/cms-media/media-41655420.pdf>, accessed October 28, 2020.

alone will not be sufficient (e.g., when the group is large). Sometimes information that is usually not personal will suddenly become such by combining it with other information (e.g., a signed artwork of a child hung outside a kindergarten in a smaller town or a geolocation data joined with data from the phone). Due to such an approach and the construction of the above-mentioned definition one can be sure that each time it is not meaningless formalities that are required but the real human and his personal data are protected, and likewise, there is no situation in which they are not, even if the protected data could seem as not personal.

## Personalism in the Practical Application of Personal Data Protection Regulations

A personalistic approach is also necessary when applying data protection regulations. They impose specific obligations on data controllers (the person responsible for processing data). Some of these obligations are clearly formulated, while others shall be properly read by the controller. It is the controller himself, taking into account the specific realities in which he operates, who decides what documents he should draw up, what organizational rules he should establish, etc. This is due to the fact that it is not the formalities that are to be fulfilled but the real protection of the personal data that should be created.

The duties seen outwardly in the form of creating appropriate documentation are to be only an emanation of basic assumptions, which are the protection of man and his dignity by protecting his personal data. If the administrator approaches his duties purely formally, without a vision of the human being on the horizon, then his actions will not really fulfill the purpose of the introduced standards. They will not lead to the protection of human dignity, but only to the creation of meaningless documents, tables, and statements. The creation of a fat binder of authorization to process data will not cause personal data to be processed only by persons authorized to do so. It is still necessary to make these persons aware of what their authorizations involve and what the protection of personal data is all about. Failure to provide information about the hospital's residents may and will result in personal data not being leaked out of the hospital, but it will also prevent parents from knowing which hospital their child is being transported to, and therefore will not safeguard the child's need for contact with his or her relatives. Another example would be the situation when two people with conflicting interests will have their rights (for example, a person who crushed the car and the car's owner) and the need of assessing

will arise whether the data protection is stronger in such situation or the other right (for example, if the place of the car crash was filmed, the stronger right would have the owner of the car to get the film to prove his damage or the person who crashed the care to protect his or her personal data). Therefore, it is always necessary to see a human being and the need to protect them on many levels.

## Conclusion

To sum up, it must be said that the right to data protection is now a clearly defined right, whose presence in legal systems is not only forced by external circumstances—for example, technological developments—but also by the needs of a more conscious person. The protection of personal data is, after all, the protection of his or her privacy, and ultimately his or her dignity as a human being. This individual approach in defining personal data, the need to interpret the regulations taking into account the circumstances accompanying an individual and, above all, by realizing the need to protect the real person, the protection of personal data can be justly seen as an expression of personalism.

## Bibliography

- Burke, Cormac. “Renewal, Personalism and Law.” *Forum* 7 (1996): 327–340.
- Constitution of the Republic of Poland of April 2, 1997 (Dziennik Ustaw No. 78, item 483).
- Conferenza Episcopale Italiana, Decreto generale *Disposizioni per la tutela del diritto alla buona fama e alla riservatezza* (21–24.05.2018). <https://www.chiesacattolica.it/wp-content/uploads/sites/31/2018/05/25/Decreto-generale.pdf>. Accessed October 28, 2020.
- Duszczyk, Michał. “W Darknecie handlują danymi i tożsamościami. Zaskakujące ceny.” <https://cyfrowa.rp.pl/it/49567-nielegalny-handel-danymi-osobowymi-kwitnie-w-darknecie-zaskakujace-ceny>. Accessed January 2, 2021.
- Gesetz über den Kirchlichen Datenschutz (KDG) in der Fassung des einstimmigen Beschlusses der Vollversammlung des Verbandes der Diözesen Deutschlands vom 20. November 2017. <https://www.erzbistum-muenchen.de/cms-media/media-41655420.pdf>. Accessed October 28, 2020.
- International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. Accessed October 28, 2020.

- Konferencja Episkopatu Polski. Dekret ogólny w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych w Kościele katolickim wydany przez Konferencję Episkopatu Polski, w dniu 13 marca 2018 r., podczas 378. Zebrania Plenarnego w Warszawie, na podstawie kan. 455 Kodeksu Prawa Kanonicznego, w związku z art. 18 Statutu KEP, po uzyskaniu specjalnego zezwolenia Stolicy Apostolskiej z dnia 3 czerwca 2017 r. *Akta Konferencji Episkopatu Polski* 30 (2018): 31–54.
- Kroczek, Piotr. *The Art of Legislation: The Principles of Lawgiving in the Church*. Kraków: Unum Publishing House, 2017.
- 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 (General Data Protection Regulation) (Text with EEA relevance). *Official Journal of the European Union*, L 119/1, 04.05.2016.
- The Charter of Fundamental Rights of the European Union of 7 December 2000. *Official Journal of the European Union*, C 326/391.
- The Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on November 4, 1950, amended by Protocols No. 3, 5, and 8 and supplemented by Protocol No. 2, *Dziennik Ustaw* (1993), No. 61, item 284, as amended.
- The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108>. Accessed October 28, 2020.
- The 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. *Official Journal of the European Union*, L 281: 31–50.
- The Explanatory Report to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. Strasbourg, 28.01.1981. <https://rm.coe.int/16800ca434access29.12.2020>. Accessed October 28, 2020.
- Wojtyła, Karol. *Osoba i czyn* (Kraków: Polskie Towarzystwo Teologiczne, 1969); Karol Wojtyła, *The Acting Person*. Translated by Andrzej Potocki. <https://www.scribd.com/doc/57487848/The-Acting-Person>. Accessed October 28, 2020.

Małgorzata Chojara-Sobiecka, Piotr Kroczek

## La protection des données personnelles comme expression du personnalisme

### Résumé

Le personnalisme porte sur des questions liées à l'homme. L'un des problèmes actuels communément reconnu est la protection des données personnelles. L'objectif de l'article est de présenter la relation entre les réglementations légales sur la protection des données personnelles, dont le RGPD, et le personnalisme. L'auteur conclut qu'il existe de nombreux éléments dans les réglementations légales qui justifient la conviction que la protection des données personnelles peut être perçue comme une manifestation du personnalisme.

Mots-clés: protection des données personnelles, personnalisme, Karol Wojtyła, GDPR



Małgorzata Chojara-Sobiecka, Piotr KroczeK

## La protezione dei dati personali come espressione del personalismo

### Sommario

Il personalismo riguarda le questioni legate all'uomo. Uno dei temi attuali comunemente riconosciuto è la protezione dei dati personali. L'obiettivo dell'articolo è presentare il rapporto tra le norme di legge in materia di protezione dei dati personali, incluso il GDPR, e il personalismo. L'autore conclude che vi sono molti elementi nelle norme giuridiche che giustificano la convinzione che la protezione dei dati personali possa essere vista come una manifestazione del personalismo.

Parole chiave: protezione dei dati personali, personalismo, Karol Wojtyła, GDPR