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LEGAL PROTECTION OF THE RIGHT TO PERSONAL DATA AND LIABILITY FOR DAMAGES – BETWEEN THE NORMATIVE FRAMEWORK AND ACTUAL EFFECTIVENESS

ABSTRACT: The right to protection of personal data is one of the key modern human rights, the violation of which is becoming increasingly frequent amid intensive digitization and mass data processing. Although the normative framework, especially in the European legal space through the General Data Protection Regulation (GDPR, 2016), provides for the right to compensation for material and non-material damage due to the violation of this right, in practice, this raises the question of the real effectiveness of civil law protection for injured persons. The aim of this paper is to examine the scope and limitations of civil liability for the violation of the right to the protection of personal data, with special reference to the institution of compensation for non-material damages. The paper applies the normative-legal and comparative legal method, as well as an analysis of the relevant case law of the Court of Justice of the European Union, especially with regard to the interpretation of Article 82 of the GDPR (2016). Special attention is devoted to the consideration of the relationship between the

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violation of rights and the existence of legally relevant damage, as well as the problems of proving non-material damage in national legal systems. The research results indicate the existence of a normatively established, but in practice, often fragmented system of civil legal protection, in which uneven judicial practice and the absence of clear criteria for establishing the existence and amount of compensation for non-material damage reduce the real effectiveness of the right to compensation. In conclusion, the work points to the need for further harmonization of civil law institutes with the objectives of the right to protect personal data, in order to ensure complete and effective legal protection of injured subjects.

Keywords: *protection of personal data, civil liability, compensation for damage, non-material damage, GDPR, effectiveness of legal protection.*

1. Introduction

The right to the protection of personal data today represents one of the key rights of the modern legal order, the importance of which is further emphasized by the intensive development of digital technologies, massive data processing and increasingly frequent violations of the privacy of individuals. The increasing frequency of the exchange of personal information is accompanied by numerous violations, which is why regulations on personal data protection have been developing intensively around the world over the past twenty years (Jašarević, 2018, p. 293). Although the normative framework for the protection of personal data, especially at the level of the European Union and in domestic law, is extremely developed, the question of the actual effectiveness of legal protection remains open, especially in the domain of civil liability and compensation for damages caused by the violation of this right.

A special challenge is the realization of the right to compensation for non-material damage due to the violation of the right to the protection of personal data. Personal data represent the manifestation of an individual's personality in legal life and serve the purpose of exercising various rights and interests (Andonović & Prlja, 2020, p. 14). Sensitive personal data enjoy a higher degree of legal protection compared to other categories of personal data (Krivokapić et al., 2019, p. 14). Children and young people are regarded as a digital generation, pioneers in the development of digital competence; however, at the same time, they are considered a vulnerable group of internet users who are exposed to potential risks (Zuković & Slijepčević, 2015,

pp. 241–242). Although modern legal systems recognize the possibility of compensation for both material and non-material damage, judicial practice shows significant doubts regarding the concept of damage, the threshold of its severity, the burden of proof and the criteria for determining the amount of compensation. These issues have been additionally actualized by the development of the practice of the Court of Justice of the European Union, especially in connection with the interpretation of Article 82 of the General Data Protection Regulation (2016), which increasingly affects national civil law systems.

The aim of this work is to examine to what extent the existing normative framework provides effective civil law protection of the right to personal data, with special reference to responsibility for damage and realization of the right to compensation for non-material damage. The paper starts from the thesis that a formally high level of normative protection does not necessarily mean effective protection in practice, especially in situations where the criteria for recognition and quantification of damage are uneven or insufficiently precise.

In a methodological sense, the work is based on a normative analysis of relevant sources of law, primarily the General Data Protection Regulation (GDPR, 2016) as well as on an analysis of contemporary case law of the Court of Justice of the European Union in the area of compensation for damages due to the violation of the right to personal data. In addition, the comparative law method was applied, in order to see the relationship between European standards and traditional institutes of civil law, as well as the analytical-dogmatic method in order to clarify the concept of non-material damage and civil liability in this specific context.

In this way, the paper seeks not only to provide a critical review of existing normative and judicial solutions, but also to identify key practical challenges in exercising the right to compensation for damages due to violations of the right to protection of personal data. Special attention is paid to considering possible directions for improving the efficiency of civil law protection, including the development of clearer criteria for assessing non-pecuniary damage, strengthening procedural mechanisms that facilitate proving violations and their consequences, as well as the importance of case law in ensuring uniformity and more effective protection of persons whose personal data have been violated. Based on this, the paper points to the need to establish a balance between normative requirements and their actual application in case law.

2. Term and significance of the right to protection of personal data

The right to the protection of personal data is today considered one of the fundamental rights of the modern legal order, the meaning of which has significantly exceeded the framework of the classical understanding of privacy. Although historically it was developed within the right to private and family life, the protection of personal data is affirmed in modern legal systems as an autonomous basic right, with special normative content, institutional mechanisms and judicial protection, which is confirmed by both the normative sources of European Union law and contemporary judicial practice and legal doctrine (Charter of Fundamental Rights of the European Union, 2012; Art. 7-8; Van Alsenoy, 2016, pp. 272–273; Slijepčević, 2019, pp. 4–6).

Personal data includes all information related to a specific or determinable natural person and that enables his identification, either directly or indirectly, while their inadequate use can lead to the violation of privacy and other basic rights such as identification and contact data, such as first and last name, unique citizen registration number, residential address, telephone number, personal document numbers, as well as data on the age, employment, functions, status and position of the individual in certain legal or social relationships (Slijepčević, 2019). It is about data whose disclosure or misuse can endanger the life, bodily and physical integrity, honor, reputation, family life, identity and name of an individual, and they refer to both living persons and those who have died or been declared dead. In modern society, which is characterized by a constant increase in the availability and exchange of information, the protection of personal data represents one of the most significant and sensitive legal issues, since the increased availability of data simultaneously carries a greater risk of its misuse, understood as any unauthorized or illegitimate processing of data that can cause or could cause damage to the person to whom the data refer.

The relationship between the right to privacy and the right to the protection of personal data is theoretically ambiguous. It should be borne in mind that, once personal data have been published, it is almost impossible to monitor their further dissemination (Diligenski, Prlja & Cerović, 2018, p. 106). The need to strike a balance between innovation and privacy protection has become increasingly evident with the emergence of digital technologies, social networks, and artificial intelligence, all of which significantly facilitate communication and business activities (Zečević, 2025, p. 88). In recent years, with the advancement of medical informatization, the collection of medical

data has gained growing importance. However, since medical data are often closely linked to the safety of human life and property and require a high level of security protection, it is difficult to fully assess and realize the value of such data (Shi Yun, 2022, p. 470).

While privacy is traditionally understood as the right of an individual to exclude the public from certain segments of his life, the protection of personal data has a wider scope, as it also refers to situations in which there is no element of intimacy, but there is a risk of misuse of information that enables the identification of a person (Li, 2023, p. 337). It is precisely in this difference that the civil law significance of this right lies, since damage can occur even without classic encroachment on private life, for example through loss of control over data, fear of its abuse or damage to reputation.

The civil law dimension of the right to the protection of personal data comes to the fore especially in the context of liability for damage. Violation of this right can lead to material and non-material damage, which is reflected in psychological suffering, feeling of insecurity, fear or loss of trust in institutions that process data (Novović & Bubalo, 2025, p. 36). In this way, the right to the protection of personal data is functionally connected with the general institutes of obligation law, primarily with the rules on tort liability and compensation for damages.

The importance of the right to the protection of personal data is further enhanced by the fact that modern data processing takes place on a massive, automated and often non-transparent basis, which increases the risk of injury and makes it difficult to obtain legal protection. This is precisely why consideration of this right cannot remain at the level of normative recognition, but requires an analysis of its real effectiveness in practice, especially through the lens of civil compensation mechanisms.

3. Normative framework for the protection of rights to personal data

The development of information and communication technologies led to an exponential growth in the processing of personal data, which required the establishment of a comprehensive and multi-layered legal framework that regulates this area both at the international and national level. Normative protection of the right to personal data cannot be viewed in isolation, but as part of a broader system of protection of privacy, personal rights and civil law interests of an individual, including the right to judicial protection and compensation in case of injury.

At the international level, the protection of the right to personal data has its foundations in general human rights documents. The Universal Declaration of Human Rights guarantees the protection of private and family life, home and correspondence, prohibiting arbitrary interference in these spheres (1948). Similar protection is contained in the International Covenant on Civil and Political Rights, which imposes an obligation on states to provide legal protection against illegal or arbitrary invasion of privacy (1966). Of particular importance in the European context is the Convention for the Protection of Human Rights and Fundamental (1950), Article 8 of which guarantees the right to respect for private and family life, home and correspondence, while the practice of the European Court of Human Rights significantly contributed to the development of protection standards in this area.

A normative step towards a more precise and systematic protection of the right to personal data was made by the adoption of the Council of Europe Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data, known as Convention 108, as the first international binding instrument dedicated exclusively to this area (1981). This convention, together with the Additional Protocol, set the basic principles of lawful processing, data security and international transfer, which were later incorporated into modern European standards.

For almost fifteen years, Data Protection Directive (1995) represented the fundamental normative framework for the protection of personal data in the European Union. Although its basic goals and principles remained essentially valid, the accelerated development of information and communication technologies, mass digitization of the public and private sectors, centralization of databases and globalization of data processing made the existing regulatory model insufficient for contemporary social and technological circumstances. In 2010, the European Commission indicated the need for reform, while a public consultation conducted in 2009 confirmed the growing concern regarding the impact of new technologies on privacy, as well as the need for a more unified, coherent and efficient data protection system at the Union level (Van Alsenoy, 2016).

With the adoption of the General Data Protection Regulation in 2016, which applies from 2018, the basic structure of responsibility from Directive 95/46/EC was retained, but it was qualitatively improved at the same time. The GDPR introduces a modern, comprehensive and directly applicable regulatory framework, which ensures uniform protection of personal data throughout the European Union, but also outside of it, given its extraterritorial reach.

The normative contribution of the GDPR (2016) is reflected primarily in the more precise definition of key terms, the expansion and systematization of the basic principles of personal data protection, as well as their direct connection with the data processing process itself. Unlike the previous regime, in which these principles were predominantly declarative in nature, they have acquired the status of operational legal standards whose compliance with the controller must be able to continuously prove. In particular, the principles of lawfulness, fairness and transparency, purpose limitation, data minimization, accuracy, limitation of the retention period, as well as integrity and confidentiality have been elaborated, which together form the normative basis for the lawful processing of personal data.

At the same time, the GDPR (2016) significantly strengthens the position of the individual through the introduction and elaboration of new subjective rights, including the right to clear and understandable information about data processing, the right of access, the right to data portability, the right to erasure (“the right to be forgotten”), the right to be notified in the event of a data breach, as well as the special protection of children in the digital environment. These rights are complemented by a stronger institutional framework of supervision and significantly tightened sanctioning mechanisms, which ensures the effective application of regulations and increases the preventive effect of legal protection.

In terms of liability, the GDPR (2016) establishes a comprehensive framework governing the responsibility of controllers and processors for unlawful data processing and the damage resulting from infringements of its provisions. At the same time, for the first time, it clearly and expressly positions data processors as subjects with direct legal obligations and independent liability towards the persons whose data are processed. This established a cumulative system of responsibility, within which both handlers and processors can be held responsible for the entire damage, if they at least partially contributed to its occurrence, with the possibility of subsequent internal distribution of responsibility among the participants in the processing. It is particularly significant that the GDPR explicitly recognizes the right to compensation for both material and non-material damages, which further strengthens the position of the individual in the personal data protection system compared to the previous regulatory framework (Van Alsenoy, 2016). The literature emphasizes that the right to compensation from Article 82 GDPR (2016) is not a mere sanction not for violation of regulations, but a civil protection mechanism that requires the cumulative existence of injury, damage and causal connection, whereby the responsibility of the data handler

and processor must be interpreted in accordance with the basic principles of the law of liability for damage (Zanfir-Fortune, 2020, p. 1175; Walree & Wolters, 2020, p. 353).

The jurisprudence of the Court of Justice of the European Union further clarified the scope of this right, especially with regard to the concept of non-property damage, the absence of a seriousness threshold and the criteria for its compensation, thereby affirming the GDPR as a regulatory instrument that directly affects national civil law rules on liability and compensation for damage. In this way, the protection of personal data outgrows the framework of classical administrative supervision and becomes an integral part of the modern system of civil law protection of personal rights (Li, 2023, pp. 336–339).

In the domestic legal order of the Republic of Serbia, the right to protection of personal data has a constitutional character. The Constitution of the Republic of Serbia (2006) guarantees the protection of personal data and prohibits their use outside the purpose for which they were collected, with the right of the person to judicial protection in case of abuse. At the legal level, this area is regulated by the Personal Data Protection Act (2018), which is largely aligned with the GDPR (2016) and introduces similar institutions, principles and rights of data subjects. In addition to administrative protection before the Commissioner, the national framework also enables civil protection, including the right to compensation for damages.

The civil law dimension of the protection of the right to personal data is realized through the general rules of the law of obligations, especially the institute of liability for damage. Although the Law on Obligations (1978) does not contain specific provisions on the protection of personal data, its general rules on causing damage, violation of personal rights and compensation for non-material damage are also applied to these cases (Law on Obligations, 1978). Additionally, certain situations of violation of the right to personal data may have criminal legal implications, especially through the incrimination of unauthorized collection and use of personal data (Criminal Code, 2005), as well as procedural protection mechanisms within criminal proceedings (Criminal Procedure Code, 2011). The authors point out that the interaction of administrative, civil and criminal law mechanisms is key to the real effectiveness of the protection of the right to personal data (Slijepčević, 2019, pp. 4–6).

In conclusion, the normative framework for the protection of the right to personal data is characterized by multi-layered and interwoven international, European and national sources. Of particular importance is the GDPR (2016),

which strongly influenced the redefinition of responsibility and the right to compensation for damages, bringing the protection of personal data closer to the classical institutes of civil law. Nevertheless, normative development in itself does not guarantee full and effective protection, but its real effectiveness depends on consistent application, developed judicial practice and awareness of the importance of this right in modern society, which opens up space for further analysis of civil liability and challenges in realizing the right to compensation for damages.

4. Violation of the right to protection of personal data and its legal consequences

Violation of the right to the protection of personal data occurs in situations where the processing of personal data is carried out contrary to the applicable legal rules, i.e. without the existence of a legal basis, exceeding the permitted purpose or without respecting the basic principles of processing. Modern legal theory and practice especially indicate that the violation of this right does not necessarily have to be exclusively related to mass security incidents, such as the leakage of large databases, but can also occur in individual cases of unauthorized collection, use or publication of data about a specific person (Slijepčević, 2019, p. 3–5).

The most common forms of violation of the right to the protection of personal data include illegal processing of data, their unauthorized publication, as well as insufficient security of data that leads to unauthorized access by third parties. Particularly problematic situations arise in the digital environment, where automated processing and profiling enable the processing of a large amount of data without real control of the person to whom the data relates. The jurisprudence of the Court of Justice of the European Union indicates that even a temporary loss of control over personal data may represent a relevant violation of rights, regardless of whether their further abuse has occurred (C-300/21, *UI v. Österreichische Post AG*).

One of the key issues related to the violation of the right to the protection of personal data is the question of the occurrence of damage. In accordance with modern European standards, damage can have both material and non-material character. Material damage is most often manifested through financial loss, identity theft or the inability to exercise certain rights, while non-material damage includes a violation of psychological integrity, a sense of insecurity, fear and loss of trust in institutions that process data (Li, 2023, pp. 336–339). Of particular importance is the opinion of the EU Court of

Justice that non-material damage does not have to reach a certain threshold of seriousness to be legally relevant, but it is enough that it is real and individually recognizable.

The limits of liability of the person who violated the right to the protection of personal data are determined depending on the nature of the violation, the position of the entity that processed the data and the degree of its control over the processing process. Although the GDPR (2016) introduces a high degree of responsibility for data handlers and processors, judicial practice emphasizes that the violation of regulations does not automatically lead to the obligation to compensate for damages, but it is necessary to prove the existence of damages and the causal link between the violation and the resulting consequences (Novović & Bubalo, 2025, pp. 33–36). This establishes a balance between the protection of the rights of persons and the prevention of excessive burden on the responsible entities with unfounded demands.

In conclusion, the violation of the right to the protection of personal data represents a complex legal phenomenon that goes beyond the traditional frameworks of privacy protection. Its consequences are not only reflected in individual damage, but also in the violation of trust in the legal and institutional system of data protection. Precisely because of this, understanding the forms of injury and their legal consequences is a necessary step towards consideration of civil liability and the effectiveness of compensation mechanisms, which will be the subject of the next chapter.

5. Civil liability for violation of the right to personal data

Civil liability for violation of the right to protection of personal data is one of the key mechanisms of private law protection of an individual in the modern digital environment, in which the processing of personal data becomes an integral part of almost all social, economic and contractual relations. Data protection is a significant concern across all spheres of life, presenting a variety of challenges and requiring diverse solutions (Morić, Dakić, Đekić & Regvart, 2024, p. 731). The development of information technologies and mass data processing have led to the fact that the violation of the right to personal data is no longer an exception, but a real and frequent risk, which further strengthens the importance of civil protection instruments. The special importance of this institute stems from the fact that the GDPR expressly recognizes the right of a person to compensation for damages due to a violation of data processing rules, which extends the protection of the right to personal data from the domain of predominantly public law supervision

to the classic institutes of civil law, primarily to liability for damage (GDPR, 2016). In this way, the right to the protection of personal data acquires a clear property and non-property dimension, enabling the individual to demand judicial protection and fair compensation, independently of the sanctions imposed by the supervisory authorities.

In theory and practice, there has long been no unified understanding of the legal nature of liability for violations of the right to the protection of personal data. The prevailing view is that it is a special form of tort liability based on unlawful conduct that violates a personality right, with personal data being viewed as an integral part of an individual's personal, psychological and informational autonomy (Van Alsenoy, 2016, p. 271). In this sense, a violation of data protection regulations constitutes a violation of a legally protected good, which fulfills the basic assumption for the emergence of tort liability with the application of the general principles of civil law on liability for damage. This understanding is particularly present in legal systems that view the right to the protection of personal data as part of a broader concept of personality rights and the right to privacy.

At the same time, modern legal theory indicates that liability for violations of the right to the protection of personal data cannot always be reduced exclusively to the tort framework. In certain situations, especially when data processing is carried out within the framework of a contractual relationship, such as contracts for the provision of digital services, the use of platforms or e-commerce, a breach of the obligations under the GDPR may also constitute a breach of contractual obligations towards the user (Li, 2023, p. 336). In such cases, civil liability may also have the characteristics of contractual liability, with the application of general rules on liability for breach of contractual obligations and the observance of specific standards for the protection of personal data. This confirms the hybrid nature of liability in this area, which moves between classic tort and contractual models. The question of whether Article 82 of the GDPR (2016) establishes elements of objective liability has long attracted significant attention in theory and case law. Such discussions were based on the fact that the GDPR provides for a high level of protection of data subjects, as well as limited possibilities for exemption from liability. In this context, it has been pointed out that even strict or objective liability regimes do not automatically lead to an obligation to compensate for damages if no specific legally relevant damage has occurred and if there is no causal link between the unlawful conduct and the resulting consequences (Shavell, 1980, p. 1).

The interpretation of the legal nature of the liability of controllers and processors has been the subject of intensive development in the case law of the Court of Justice of the European Union. The most recent case law of the Court of Justice of the European Union has significantly contributed to the clarification of the legal nature of liability under Article 82 of the GDPR (2016). In case *C-667/21 Krankenversicherung Nordrhein v. Verbraucherzentrale Nordrhein-Westfalen eV*, the Court took the view that in order to establish the liability of the controller, the existence of his fault is necessary, whereby fault is presumed unless the controller proves that the event that caused the damage was in no way a consequence of his actions (Judgment of the Court of Justice of the European Union C-667/21 of 21 December 2023). In this way, the Court confirmed that Article 82 of the GDPR (2016) does not establish a regime of objective liability, but of subjective liability based on presumed fault. This interpretation simultaneously ensures a high level of protection for the person to whom the data relates and the preservation of the basic principles of civil liability (Novović & Bubalo, 2025, p. 32).

Accordingly, the modern understanding of liability for violations of the right to the protection of personal data is increasingly abandoning earlier views that emphasized the objective nature of liability and is based on the understanding that the right to compensation under Article 82 GDPR (2016) requires the existence of an infringement, damage, a causal link and the presumed fault of the controller or processor. Once these requirements are fulfilled, the issue of compensation becomes the central element of civil law protection afforded to data subjects. The issue of compensation for damages is a central segment of civil protection in case of violation of the right to personal data. The GDPR expressly recognizes the right to compensation for both material and non-material damages, thereby confirming a broad understanding of the consequences of a violation of this right. In practice, material damage is most often manifested through financial losses, costs of repairing the consequences of an injury, misuse of identity or unauthorized use of data for commercial purposes. Non-material damage, on the other hand, includes a violation of psychological integrity, loss of control over personal data, fear of its misuse, damage to reputation, as well as feelings of insecurity and humiliation (Li, 2023, p. 339).

In the judgment *UI v. Österreichische Post AG*¹, the Court of Justice of the European Union took the position that the violation of the GDPR (2016) alone is not sufficient to realize the right to compensation, but it is necessary

¹ *UI v. Österreichische Post AG*, judgment of the Court of Justice of the EU, C-300/21, May 4, 2023.

to prove the existence of specific damage and the causal connection between the violation and the resulting consequences, but at the same time rejected the request for the existence of a threshold of seriousness of non-material damage. Thus, judicial practice established a balance between preventing abuses of the right to compensation and ensuring the effective protection of injured persons.

Further judicial practice confirms that the temporary loss of control over personal data, as well as the fear of their future abuse, can be grounds for compensation for non-material damages, if it is proven that the violation had a real impact on the position of the injured person (Judgment of the Court of Justice of the EU, C-182/22, *Scalable Capital*, December 14, 2023; Judgment of the Court of Justice of the EU, C-340/21, *VB v. National Agency for Revenue*, October 26 2023)². This interpretation confirms the tendency of a broader understanding of harm in the context of personal data protection, in accordance with the goals of the GDPR (2016). The authors believe that the loss of control over personal data should be recognized as an independent form of non-material damage, regardless of whether their actual misuse subsequently occurred. The very loss of a person's ability to control access to, use of and further processing of their own data constitutes a violation of informational autonomy, which can produce a feeling of insecurity, anxiety and violation of privacy. In this regard, a justified fear of future data misuse should not be viewed as an abstract or hypothetical possibility, but as a legally relevant consequence when it is based on the specific circumstances of the case and when it is capable of producing real negative effects for the injured person.

Comparative analysis shows that, despite the harmonized normative framework, the member states of the European Union still approach the issue of recognition and measurement of non-material damages differently. While some legal systems traditionally maintain a restrictive approach, others accept a broader interpretation, relying on the principles of effectiveness and equivalence of European Union law (Van Alsenoy, 2016, p. 275; Li, 2023, p. 344). This limitation can be observed in the fact that, in Decision U.14718/15, the Administrative Court focused on examining whether the supervisory authority acted within its legal powers and in accordance with the prescribed procedural rules, without engaging in a substantive analysis of the concrete consequences of the violation of the right to the protection of personal data

² *VB v. National Revenue Agency*, C-340/21, judgment of the Court of Justice of the European Union, 26 October 2023, para. 58–60, 72–75. *Scalable Capital*, C-182/22, judgment of the Court of Justice of the European Union, 14 December 2023, para. 27–32, 41–45.

for the individual. The Court confined its review to the formal legality of the Commissioner's decision, while the question of whether there had been an actual violation of personal rights and the occurrence of non-material damage requiring effective judicial protection was not subjected to in-depth consideration (Decision of the Administrative Court of the Republic of Serbia U.14718/15 dated September 22, 2015).³

The issue of the significance of the case law of the Court of Justice of the European Union for the domestic legal system deserves special attention. Although the Republic of Serbia is not a member of the European Union and the decisions of the Court of Justice of the European Union do not formally constitute a binding source of law for domestic courts, the fact that the Law on the Protection of Personal Data (2018) is largely aligned with the GDPR (2016) opens up the possibility of using the positions of this court as a relevant interpretative source. In this regard, the interpretations developed in the case law of the Court of Justice of the European Union in relation to Article 82 of the GDPR (2016) may have a significant impact on the development of domestic case law, especially when it comes to defining the concept of non-material damage, assessing the significance of the loss of control over personal data, recognizing the fear of their misuse as a legally relevant damage, as well as establishing a causal link between the violation of the regulations and the damage incurred.

In the cases *VB v. National Agency for Revenue*, (C-340/21) and *Scalable Capital*, (C-182/22) it was confirmed that the loss of control over personal data and the well-founded fear of their future misuse can constitute non-material damage if such consequences are real and demonstrable. Such positions may be of particular use to national courts in situations where the breach of the right to the protection of personal data has not produced direct material damage, but has led to a feeling of insecurity, anxiety or a violation of the privacy of the injured party.

The acceptance of standards developed in the case law of the Court of Justice of the European Union could contribute to the development of clearer criteria for the assessment and award of compensation for non-pecuniary damage in domestic law, greater legal certainty and predictability of court decisions. This is of particular importance given that domestic case law has so far focused predominantly on the control of the legality of the Commissioner's decisions, while the issues of civil liability and compensation for damage

³ As stated in the Decision of the Administrative Court of the Republic of Serbia, U.14718/15 from September 22, 2015, (*Bilten Upravnog suda Republike Srbije*, U.14718/15).

due to violations of the right to the protection of personal data are still not sufficiently developed.

6. Challenges in practice and real efficiency of protection

The challenges in practice and the actual effectiveness of the protection of the right to the protection of personal data clearly indicate the existence of a gap between the normatively proclaimed high level of protection and the real possibilities of its realization in everyday practice. The emergence of new technologies has posed a particular threat to the right to privacy (Sekulić & Grujić, 2020, p. 348). Privacy has become a matter of increasing concern for the international community, as the global population relies more and more on the Internet to access information and services (Chatsuwan, Phomma, Surasvadi & Thajchayapong, 2023, p. 2). Although the GDPR (2016) and national regulations establish an extensive and complex system of legal remedies, experiences from judicial and administrative practice show that individuals often encounter serious obstacles when exercising their rights, especially when it comes to civil protection and compensation.

In domestic judicial practice, the protection of the right to personal data is most often realized through administrative disputes against the decision of the Commissioner for Information of Public Importance and Protection of Personal Data, whereby the Administrative Court examines the legality of the processing and the application of the law, which is confirmed by the judgment of the Administrative Court of the Republic of Serbia, U.17892/17 where the Administrative Court reviewed the contested act exclusively through the prism of its legality, assessing whether the Commissioner correctly applied the relevant provisions governing the processing of personal data and whether the decision was adopted within the scope of statutory competence. The court limited its examination to the compliance of the processing with the applicable legal framework, without extending its review to issues of civil liability or compensation for damage allegedly suffered by the data subject, thereby reaffirming the administrative nature of judicial protection in this field (Decision of the Administrative Court of the Republic of Serbia U.17892/17 dated November 1, 2017)⁴. This discrepancy between normative standards and their practical application is also recognized in the practice of the European Court of Human Rights, which has repeatedly emphasized that

⁴ As stated in the Decision of the Administrative Court of the Republic of Serbia, U.17892/17 from November 1, 2017, (*Bilten Upravnog suda Republike Srbije*, U.17892/17).

the formal existence of a legal framework is not in itself a sufficient guarantee of effective protection of the right to privacy and personal data (*Rotaru v. Romania*, par. 59–61)⁵.

One of the key challenges relates to the complexity of proving damage and the existence of a causal link between the violation of data protection regulations and the resulting consequences. The Court of Justice of the European Union has repeatedly emphasized that the right to compensation for damages does not arise automatically from the violation of the GDPR (2016), itself, but that it is necessary to prove the concrete existence of material or non-material damage, as well as the causal connection between the violation and the resulting damage (*UI v. Österreichische Post AG*, C-300/21)⁶. In practice, this requirement often represents a significant obstacle for injured persons, especially when it comes to non-material damage, the consequences of which are subjective and difficult to measure. The practice of the ECtHR points to exactly these problems, which recognizes that a long-term feeling of insecurity, loss of control over personal data and psychological pressure can represent relevant elements of non-material damage, even in the absence of immediate material consequences. However, proving such consequences in national civil law proceedings often remains difficult, which contributes to the unevenness of judicial practice and increased legal uncertainty (Li, 2023, p. 341). The modern theory of data protection indicates that violations of the right to personal data often produce a state of permanent risk and anxiety, which manifests itself as a loss of control over personal information and a constant fear of its future abuse, even when material damage has not yet occurred. This “damage in the form of risk” is one of the key reasons why proving non-material damage in practice is particularly difficult, despite its real and long-term impact on the individual’s position (Citron & Solove, 2018, p. 749).

An additional problem is the non-uniformity of judicial practice regarding the criteria for determining the existence and amount of compensation for non-material damage. Although the Court of Justice of the European Union has expressly rejected the requirement for the existence of a threshold of seriousness of damage, national courts still apply different standards when assessing whether a specific injury has reached an intensity that justifies the award of compensation. A similar problem has been identified in the practice

⁵ *Rotaru v. Romania*, no. 28341/95, judgment of the Court of Justice of the European Union 4. may 2000, par. 59–61, 67.

⁶ *UI v. Österreichische Post AG*, C-300/21, judgment of the Court of Justice of the European Union, 4 May 2023, para. 36, 44–48, 54–59.

of the ECtHR, which recognizes states with a certain freedom of assessment regarding the amount of compensation, but at the same time requires that the awarded satisfaction is not symbolic and that it ensures the real protection of the violated right (*Biriuk v. Lithuania*, par. 45–47)⁷. This combination of broad discretion and the absence of precise criteria leads to a situation in which factually and legally similar cases are resolved differently depending on the national legal system or even the practice of individual courts, which calls into question the principle of equal and effective protection of rights guaranteed by the GDPR (Van Alsenoy, 2016, p. 275).

The challenges are not exhausted exclusively in court practice, but are also expressed at the level of administrative protection. Although the supervisory authorities have broad powers to impose corrective measures and sanctions, the procedures before them are often lengthy, and the imposed measures do not necessarily lead to the complete satisfaction of the injured party. In this context, the European Court of Human Rights emphasized that the existence of supervisory and preventive mechanisms cannot replace the need for effective judicial protection, especially when an individual is deprived of the opportunity to achieve personal satisfaction due to a violation of the right to privacy (*Rotaru v. Romania*, para. 67). Administrative sanctions, such as fines, primarily have a preventive and repressive function, but by themselves do not provide direct compensation to the individual, which further emphasizes the importance of civil protection as a supplementary, but also necessary, mechanism for the protection of rights (Novović & Bubalo, 2025, p. 34). This approach is confirmed by the judgment of the Administrative Court of the Republic of Serbia, U.13873/18 in which the court confirmed the legality of the Commissioner's decision, but without considering the issue of personal satisfaction or compensation for damages to the injured party, which further emphasizes the difference between administrative and civil protection (Decision of the Administrative Court of the Republic of Serbia U.13873/18 dated July 5, 2018).

A special problem in practice is the insufficient information of citizens about their rights and available legal remedies. Although the GDPR starts from the idea of empowering the individual, the complexity of the normative framework, as well as the technical nature of modern forms of data processing, often lead to the fact that injured parties are unable to reliably assess whether their rights have been violated, nor how they can effectively exercise legal

⁷ *Biriuk v. Lithuania*, application no. 23373/03, judgment of the European Court of Human Rights, November 25, 2008, para. 45–47.

protection (Knetsch, 2022, p. 140). This problem especially comes to the fore in the context of mass data processing by large digital platforms, where the asymmetry of power between the individual and the data handler is strongly emphasized, which the ECtHR recognized as a factor that further increases the risk of violation of the right to privacy (*S. and Marper v. the United Kingdom*, par. 103–105).

In light of the aforementioned challenges, the need for further development and unification of judicial practice, as well as for a more precise normative and judicial definition of criteria for determining non-material damage, in order to ensure greater legal certainty and predictability of court decisions, is increasingly emphasized in contemporary literature. The continuity of this judicial practice, which is also reflected in the judgment of the Administrative Court of the Republic of Serbia, U.12679/17 indicates that judicial protection of the right to personal data in domestic law is predominantly achieved through the control of the legality of administrative acts, while the issue of compensation remains left to civil law mechanisms, the application of which in practice is still not sufficiently developed (Decision of the Administrative Court of the Republic of Serbia U.12679/17 dated August 7, 2017). At the same time, the importance of continuous education of judges and other legal practitioners in the field of data protection is pointed out, as well as the need to strengthen procedural mechanisms that would facilitate the proof of injury and its consequences, especially when it comes to non-material damage (Li, 2023, p. 344).

In order to improve the real efficiency of civil law protection, it is necessary to develop clearer criteria for determining the existence and amount of non-pecuniary damage resulting from a violation of the right to the protection of personal data. When assessing the existence of damage, courts could take into account the nature and sensitivity of the data that are the subject of the violation, the scope and duration of the unlawful processing, the degree of loss of control over the data, the existence of a justified fear of their future misuse, as well as the specific impact of the violation on the private and professional life of the injured party. The application of such criteria could contribute to greater uniformity of case law and reduce the risk of different decisions in factually similar cases.

In addition, it is justified to consider strengthening procedural mechanisms that would facilitate the proof of non-pecuniary damage. Bearing in mind that consequences such as a feeling of insecurity, loss of control over personal data or fear of their misuse are often difficult to prove with direct evidence, indirect evidence and factual assumptions based on the circumstances of the specific

case could gain greater importance. Such an approach would not imply automatic recognition of the right to compensation, but would contribute to establishing a fairer balance between the need to prove the damage and ensuring effective protection for the person whose rights have been violated. Although the Court of Justice of the European Union still leaves the issue of determining the amount of compensation to national legal systems, further development of common interpretative standards could contribute to greater legal certainty and more uniform protection of the right to the protection of personal data at the European level.

All of the above confirms that the actual effectiveness of the protection of the right to personal data protection does not depend solely on the quality of the normative framework, but equally on its consistent, uniform and functional application in practice. The development of clearer criteria for determining and assessing non-pecuniary damage, the strengthening of procedural mechanisms that facilitate the proof of the violation and its consequences, as well as the further unification of case law are important prerequisites for the achievement of effective civil law protection. It is precisely in overcoming the gap between high normative standards and the practical limitations of their application that one of the key challenges of the modern system of personal data protection and civil liability for their violation lies.

7. Conclusion

The right to the protection of personal data is today one of the most important rights in the modern legal order, the importance of which is continuously growing along with the accelerated development of digital technologies and increasingly intensive data processing. In such circumstances, civil liability for damage gains special importance as one of the key instruments for ensuring effective protection of the individual. The regulatory framework established by the GDPR undoubtedly represents one of the most developed systems for the protection of personal rights in modern law, as it guarantees not only the recognition of the right to the protection of personal data, but also effective legal remedies, as well as the right to compensation for material and non-material damage resulting from their violation.

The research results show that the mere existence of a developed regulatory framework is not enough to ensure effective protection of rights in practice. Although the case law of the Court of Justice of the European Union has significantly contributed to clarifying the conditions for liability under Article 82 of the GDPR (2016), in particular with regard to the concept

of damage, causality and the presumed fault of the controller and processor, numerous uncertainties still exist in practice, in particular when it comes to the recognition and measurement of non-material damage. Uneven case law and different approaches of national courts reduce legal certainty and may lead to different levels of protection for individuals whose rights have been violated.

The study confirmed that the greatest shortcoming of the current system is the absence of clear criteria for assessing non-material damage resulting from a breach of the right to the protection of personal data. Precisely for this reason, case law should develop a uniform approach based on objective and foreseeable criteria. When deciding on compensation for damages, the following should be assessed in particular: the type and sensitivity of the unlawfully processed data, the scope and duration of the infringement, the number of persons to whom the data became available, the degree of loss of control over the data, the existence of a justified fear of their future misuse, the real consequences for the private, family and professional life of the injured party, as well as the actions of the operator after the infringement, in particular the speed of eliminating the consequences, cooperation with the supervisory authority and timely notification of the person whose data was infringed.

In addition to the development of substantive legal criteria, it is necessary to improve procedural protection mechanisms. This includes clearer rules on the distribution of the burden of proof, wider acceptance of circumstantial evidence when proving non-pecuniary damage, as well as greater use of forensic expertise when it is necessary to determine the psychological and other consequences of a violation of rights. At the same time, it is necessary to ensure continuous education of judges in the field of personal data protection and more systematic reliance of domestic courts on the standards developed in the practice of the Court of Justice of the European Union, bearing in mind that the Law on the Protection of Personal Data (2018) is largely aligned with the GDPR (2016).

The initial thesis of the paper, according to which a high level of normative protection does not necessarily imply an equally high level of its practical effectiveness, is fully confirmed. The future development of civil law protection of the right to personal data protection should be aimed not only at further harmonization of legislation with European standards, but also at the development of uniform judicial criteria, strengthening procedural guarantees and improving judicial practice. Only by combining clear substantive rules, effective procedural mechanisms and consistent application of the standards of the Court of Justice of the European Union can it be ensured that the right

to the protection of personal data does not remain a normatively proclaimed right, but represents a real and effective means of protecting individuals in the digital age.

The right to the protection of personal data in a digital society must not remain a declarative human right, but must represent a right whose judicial protection is rapid, effective and predictable. Only if civil law mechanisms are able to provide real satisfaction to the injured party can we speak of the full realization of the objectives of the GDPR (2016) and of a modern personal data protection system.

Conflict of Interest

The authors declare that there is no conflict of interest.

Author Contributions

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PRAVNA ZAŠTITA PRAVA NA LIČNE PODATKE I ODGOVORNOST ZA NAKNADU ŠTETE – IZMEĐU NORMATIVNOG OKVIRA I STVARNE EFIKASNOSTI

APSTRAKT: Pravo na zaštitu podataka o ličnosti predstavlja jedno od ključnih savremenih ljudskih prava, čija se povreda sve češće javlja u uslovima intenzivne digitalizacije i masovne obrade podataka. Iako normativni okvir, posebno u evropskom pravnom prostoru kroz Opštu uredbu o zaštiti podataka (General Data Protection Regulation, GDPR, 2016) predviđa pravo na naknadu materijalne i nematerijalne štete usled povrede ovog prava, u praksi se otvara pitanje stvarne efikasnosti građanskopravne zaštite oštećenih lica. Cilj ovog rada jeste da ispita domete i ograničenja građanskopravne odgovornosti za povredu prava na zaštitu ličnih podataka, sa posebnim osvrtom na institut naknade nematerijalne štete. U radu se primenjuju normativno-pravni i uporednopravni metod, kao i analiza relevantne prakse Suda pravde Evropske unije, naročito u pogledu tumačenja člana 82 GDPR-a (2016). Posebna pažnja posvećena je razmatranju odnosa između same povrede prava i postojanja pravno relevantne štete, kao i problemima dokazivanja nematerijalne štete u nacionalnim pravnim porecima. Rezultati istraživanja ukazuju na postojanje normativno uspostavljenog, ali u praksi često fragmentisanog sistema građanskopravne zaštite, u kojem neujednačena sudska praksa i odsustvo jasnih kriterijuma za utvrđivanje i visinu naknade nematerijalne štete umanjuju stvarnu delotvornost prava na naknadu. Zaključno, rad ukazuje na potrebu daljeg usklađivanja građanskopravnih instituta sa ciljevima prava zaštite podataka o ličnosti, kako bi se obezbedila potpuna i efektivna pravna zaštita oštećenih subjekata.

Ključne reči: zaštita podataka o ličnosti, građanskopravna odgovornost, naknada štete, nematerijalna šteta, GDPR, efikasnost pravne zaštite.

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