

“THE NATIONAL AUTHORITY FOR THE PROTECTION OF PERSONAL DATA IN ALGERIA. GUARANTEE FOR THE PROTECTION OF THE RIGHT TO PRIVACY AND NATIONAL SECURITY”.

SOLTANI LEILA FATIMA ZOHRA GHANIA¹

¹Professor Lecturer A, Faculty of Law and Political Sciences, Djillali Liabes University of Sidi Bel Abbas (Algeria).

The E-mail Author: leila.soltani@univ_sba.dz

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Abstract:

The Algerian constitutional legislator, in the 2016 constitutional amendment, established in article 46, paragraph 4, that “the protection of natural persons in the field of personal data processing is a fundamental right guaranteed by law and its violation is punishable.”

In consecration of this text, the Algerian legislator enacted Law No. 18-07 of 10/06/2018 on the protection of natural persons in the field of personal data, which aims to establish legal rules to ensure the protection of the rights of natural persons to their honour, reputation and private life in the field of personal data processing. This law, which provided for the creation of the National Commission for the Protection of Personal Data as a legal and institutional mechanism endowed with legal personality and financial and administrative independence, was entrusted with several competences in the context of the protection of the right to privacy of natural persons, as it is a fundamental right that requires legal protection. In fact, this authority was created in Algeria in 2022.

Therefore, this research study aims to clarify the National Authority for the Protection of Personal Data in terms of the reasons for its establishment and its concept in the first section. Its legal system and its impact in the second section.

Keywords: Protection, national authority, personal data, Algerian legislator.

INTRODUCTION:

One of the main innovations of the Algerian constitutional amendment of 2016¹ was the inclusion, for the first time, of the right to the protection of natural persons in the field of the processing of personal data. This right is protected by law and its violation is punished by Article 46. This was in response to the rapid development of information and communication technologies and to keep pace with international developments.

The Algerian legislator enacted Law No. 18-07 of 10/06/2018 on the protection of natural persons in the field of personal data², which aims to establish legal rules relating to the protection of the rights of natural persons in terms of their honour, reputation and private life in the field of personal data processing.

This law provided for the establishment of the National Commission for the Protection of Personal Data, which enjoys legal personality and financial and administrative independence, as an institutional legal mechanism entrusted with various competences within the framework of the protection of the right of natural persons to the inviolability of their private life, as a fundamental right that requires legal protection.

Personal data means any information, regardless of its medium, relating to an identified or identifiable natural person, whether directly or indirectly, in particular by reference to an identification number or to one or more elements specific to his physical, physiological, genetic, biometric, psychological, economic, cultural or social identity³.

¹- Issued in accordance with Law No. 16-01 of 06/03/2016, Official Gazette No. 14 of 07/03/2016.

²- Published in Official Gazette No. 34 of 10/06/2018, this law entered into force on 10/09/2023.

³ - Article 3, paragraph 2 of Law No. 18-07 of 10/06/2018.



On the basis of this definition, personal data can be divided into two categories:

The first category includes data of a nominal nature (name and surname, postal and e-mail address, genetic data, health data, criminal record, personal photos, marital status, curriculum vitae, date of birth, place of residence, place of work, etc.).

The second category includes indirect nominal information (telephone number, social security number, national identity card number, confidential passwords, biological and biometric data, bank account number, fingerprint, genetic profile, etc.)⁴.

In order to protect this data, Law No. 18-07 established the National Commission for the Protection of Personal Data as an institutional mechanism to ensure the respect and protection of personal data⁵. What does this mechanism consist of? What are the reasons for its creation in Algeria? What is its legal system? What is the legal protection of its members? What is the reality of the Algerian experience with this authority?

In order to address this issue, the analytical method was used by analysing the legal texts related to it, specifically Law No. 18-07 on the Protection of Natural Persons in the Field of the Processing of Personal Data.

Therefore, this research study aims to clarify the National Authority for the Protection of Personal Data in terms of the reasons for its establishment and its concept in the first section. Its legal system and the mechanisms for carrying out its duties in the second section, and the criminal protection of its members and the Algerian experience with it in the third section.

The first section: The reasons for setting up the National Authority for the Protection of Personal Data and its approach.

With the endless development of information and communication technologies, the circulation, use and storage of personal data has become more widespread and easier, which has required the establishment of legal standards to ensure the protection of these data against various attacks. Countries have hastened to adopt national legislation and accede to multilateral conventions that undertake to protect these data and ensure their security, while guaranteeing and respecting individual freedom and human privacy.

Algeria has not remained aloof from these efforts, as one of the positive aspects of the Algerian constitutional amendment of 2016 is that the text, in its article 46, for the first time refers to the protection of the “right to privacy”, and the constitutional amendment of 2020 also enshrines this right in its article 4⁶.

However, there are reasons and motives that have led to the creation of this National Authority for the Protection of Personal Data, the most important of which are:

The First Requirement: The International and National Reasons for the Establishment of the National Authority for the Protection of Personal Data.

The creation of the National Authority for the Protection of Personal Data is considered a gain in the consecration of human rights, particularly the right to privacy. The establishment of this mechanism in Algeria, which is considered late in comparison with other countries, was based on international and national motives.

The first branch: The international reasons for the creation of the national authority for the protection of personal data.

The inclusion of this institutional mechanism by the Algerian legislator in article 47 of Law No. 18-

⁴- Mariam Loukal, “International and national legal protection of personal data in the digital space: In light of the Data Protection Law No. 18-07”, *Journal of Legal and Political Sciences*, Vol. 10, No. 01, 2019, p. 1309.

⁵- This authority is referred to in France as the “National Commission for Information Technology and Civil Liberties”, in Germany as the “Federal Commissioner for Data Protection and Freedom of Information”, in Tunisia as the “National Authority for the Protection of Personal Data” and in Morocco as the “National Commission for the Control of the Protection of Personal Data”, Aicha Ben Kaira Mustafa, “Mechanisms for the Protection of Personal Data in Algerian Legislation According to Law No. 18-07”, *Journal of Legal and Political Sciences*, Vol. 10, No. 1, 2019, p. 748.

⁶- Issued pursuant to Presidential Decree No. 20-442 of 30/12/2020, *Official Journal* No. 82 of 30/12/2020.



07 is due to the fact that Algeria has ratified most of the international and regional conventions relating to human rights and public freedoms, its participation in international covenants⁷, declarations and conventions relating to human rights, such as the International Covenant on Civil and Political Rights of 1966, to which Algeria acceded in 1989⁸, and the need to update its legislation in order to comply with its international obligations. This issue led to the creation of this mechanism.

The Algerian legislator was also influenced by comparative legislation, such as that of France, which named it the National Commission for Information Technology and Freedoms, that of Germany, which named it the Federal Commissioner for Data Protection and Freedom of Information, and that of Tunisia, which named it the National Authority for the Protection of Personal Data⁹. The protection of the right to privacy has become more than important in recent decades, with the unprecedented development of media, communication and digital transformation in the processing of personal data and violations, requiring intervention to protect through this mechanism.

The second branch: The national motives for the creation of the national authority for the protection of personal data:

The widespread and easy circulation of personal data, especially with the development of data processing, communication and file storage means, has prompted states to formulate legislation to protect personal data, including the Algerian legislature, which has always emphasised the protection of the right to privacy of each individual. The 2016 constitutional amendment states that the sanctity of the citizen's private life, honour and the confidentiality of correspondence and private communications may not be violated in any way without a reasoned order from the judicial authority, and that any violation is punishable by law. It also introduced for the first time the right to the protection of natural persons in the field of the processing of personal data, which is protected by the law and whose violation is punishable¹⁰.

In order to respond to the rapid development in the field of information and communication technologies and to keep pace with international developments, the Algerian legislator enacted Law No. 18-07 of 10/06/2018 on the protection of natural persons in the field of personal data, the main objective of which is to establish legal rules relating to the protection of the honour, reputation and private life of natural persons in the field of processing personal data¹¹.

The establishment of the Authority in Algeria on 11 August 2022 marked the completion of the institutional building process initiated by the President of the Republic as an embodiment of his commitments in the field of the promotion of rights and freedoms, which is seen as a further step in the State's efforts to establish institutions in line with international standards, given that Algeria attaches great importance to protecting the privacy of individuals by enshrining the right to privacy, which the Algerian Constitution stipulates may not be violated except by a reasoned decision of the judicial authority, considering that the protection of the processing of personal data of individuals is a fundamental right and that the law provides for criminal sanctions for any violation. This authority also officially launched its website in Algiers on Monday 30 January to raise

⁷- As with the Universal Declaration of Human Rights, adopted by United Nations General Assembly Resolution 217 A (III) of 10 December 1948, which Algeria approved in its 1963 Constitution, Article 11 states that "The People's Democratic Republic of Algeria supports the Universal Declaration of Human Rights and joins any international organisation that meets the aspirations of the Algerian people, convinced of the need for international cooperation."

⁸- Issued pursuant to Presidential Decree No. 89/67 of 16 May 1989, Official Journal No. 20 of 17 May 1989.

⁹- This authority was created in Tunisia by Organic Law No. 63 of 2004 of July 2004.

¹⁰- Article 46, paragraph 4 of Law No. 16-01 of 06/03/2016, which incorporates the Algerian constitutional amendment.

¹¹- Law No. 18-07 of 10/06/2018 on the protection of natural persons in the processing of personal data, Official Journal No. 34, published on 10/06/2018.



awareness and inform data subjects and data controllers of their rights and obligations¹².

The second branch: The legal provisions on the National Authority for the Protection of Personal Data in the 2016 Constitutional Amendment and Law No. 18-07, and its concept

One of the criticisms of the Algerian legislator was that it did not provide for this authority in its provisions. The legislator remedied this in the 2016 constitutional amendment, which was followed by the issuance of Law No. 18-07, which defined this authority.

The first subdivision: The absence of the authority in previous constitutions and its remedy by the 2016 constitutional amendment and Law No. 18-07

Despite Algeria's interest in human rights and fundamental freedoms, especially with the advent of the 1989 Constitution, a review of Algerian constitutions reveals the absence of any reference to this authority. From the 1963 Constitution, which was Algeria's first constitution as a sovereign state, to the subsequent constitutions until the 1989 Constitution, there was no change in the reference to the National Authority for the Protection of Personal Data. This was followed by the 1996 Constitution and its amendments in 2002 and 2008, which did not introduce any new provisions concerning this body.

The legislator remedied the issue of the authority through the 2016 constitutional amendment and Law No. 18-07, as the reference to this authority had been overlooked in previous Algerian constitutions and laws. For the above-mentioned reasons, the Algerian state tended to codify this institutional mechanism for the protection of personal data through the 2016 constitutional amendment and then through Law No. 18-07, thereby giving it legal legitimacy through its third chapter entitled "The National Authority for the Protection of Personal Data".

The second section: The concept of the National Authority for the Protection of Personal Data.

According to Article 22 of Law No. 18-07, this body is an independent administrative authority under the authority of the President of the Republic, with its headquarters in Algiers. It has legal personality and financial and administrative autonomy, and its budget is included in the State budget and is subject to financial control in accordance with the legislation in force.

The national authority draws up and approves its own internal regulations, which lay down in particular the arrangements for its organisation and operation. This authority has been effectively established and its internal rules were approved on 26 July 2002. This internal regulation clarifies the modalities of the functioning of the authority and the obligations of the persons responsible for the processing, as well as the rights of the natural persons concerned¹³.

The second chapter: The legal system of the national authority for the protection of personal data and the mechanisms for carrying out its tasks.

In order to study the legal system of this authority, it is necessary to examine its composition, organisation and operation, as well as its powers and the mechanisms for carrying out its tasks.

The first section: Composition, organisation and functioning of the national authority for the protection of personal data.

In addition to its administrative structures, the National Authority for the Protection of Personal Data also consists of human resources. Therefore, we will try to discuss its composition, organisation and functioning.

The first branch: Composition of the National Authority for the Protection of Personal Data:

This authority is composed of various and diverse entities, including representatives of the three branches of government (executive, legislative and judicial), as well as other bodies. It is composed of sixteen (16) members, including the President, appointed by Presidential Decree for a renewable term of five (5) years on the basis of their legal and/or technical expertise in the field of personal data processing, as follows:¹⁴

- Three personalities, including the President, chosen by the President of the Republic from among

¹²- The website of the National Authority for the Protection of Personal Data: www.anpdp.dz

¹³- See Article 2 of the Internal Regulations of the National Authority for the Protection of Personal Data.

¹⁴- Article 23 of Law 18-07.



those with expertise in the field of the National Authority's work,

- Three judges proposed by the Supreme Council from among the judges of the Supreme Court and the Council of State,
- One member from each chamber of Parliament, chosen by the President of each chamber in consultation with the leaders of the parliamentary groups,
- One representative of the National Human Rights Council,
- One representative of the Minister of Defence,
- One representative of the Minister of Foreign Affairs,
- One representative of the Minister of the Interior,
- One representative of the Minister of Justice, Keeper of the Seals,
- One representative of the Minister of Post, Telecommunications and Digital Technologies,
- One representative of the Minister of Health,
- A representative of the Minister of Labour and Social Security.

The National Authority may call upon any qualified person to assist it in its work¹⁵.

The members of the National Authority for the protection of personal data take the oath before the Court of Algiers before assuming their duties, in accordance with article 24 of law no. 18-07. The system of remuneration for the members of the authority is established by decree¹⁶.

In addition to the President and the members of the Authority, the Authority has an Executive Secretariat, headed by the Executive Secretary, who is assisted in the performance of his duties by the staff of the Executive Secretariat, who also take the oath before the Court of Algiers¹⁷.

Presidential Decree No. 23-73 of 14 February 2002 defines the tasks of the Executive Secretariat of the National Authority for the Protection of Personal Data and the modalities of its organisation and functioning¹⁸. According to Article 2, the Executive Secretariat, which reports to the President, is the executive body that provides administrative, technical and logistical support to the National Authority for the Protection of Personal Data, referred to in the text as "the Authority".

The Executive Secretary, under the supervision of the President of the Authority, manages the Executive Secretariat and coordinates its various structures. The Executive Secretary is assisted in the performance of his duties by two (2) Directors of Studies and two (2) Heads of Studies.

The Executive Secretariat comprises the following structures

- Legal and Compliance Directorate,
- Directorate of Communication and Information Systems,
- General Administration Directorate¹⁹.

The Legal Affairs and Compliance Directorate is in charge of studying and following up legal matters and disputes, as well as organising the tasks of inspection, monitoring and auditing related to the processing of personal data, in coordination with all the structures of the Authority. The Directorate of Communication and Information Systems is responsible for providing all the technical, material and software solutions necessary for the proper functioning of the Authority. The Directorate General Administration shall be responsible for providing and monitoring the human, material, financial and logistical resources necessary for the functioning of the Authority.

Section II: Operation of the National Authority for the Protection of Personal Data

The members of the National Authority are obliged to maintain the confidentiality of personal data and information to which they have had access in this capacity, even after their duties have ceased, unless a text provides otherwise²⁰ However, professional secrecy is not accepted before the

¹⁵- Presidential Decree of 16 October 2023 appointing the President of the National Authority for the Protection of Personal Data, Official Gazette No. 67 of 18 October 2023.

¹⁶- Presidential Decree No. 24-118 of 01/04/2024 establishing the compensation system for members of the National Authority for the Protection of Personal Data, Official Gazette No. 24 of 07/04/2024.

¹⁷- Article 27 of Law No 18-07.

¹⁸- Official Journal No. 10 of 15/02/2023.

¹⁹- See Article 6 of Presidential Decree No. 23-73.

²⁰- Article 26 of Law No 18-07.



National Authority, according to the text of article 49, paragraph 2, which gives it the right of access to the data processed and to all information and documents²¹.

Second requirement: Powers of the National Authority for the Protection of Personal Data and mechanisms for exercising its functions

The National Authority for the Protection of Personal Data has been entrusted with a series of powers to guarantee the right to privacy and protect national security, and to this end it has been strengthened by a series of mechanisms and procedures, which we will explain as follows:

First branch: Powers of the National Authority for the Protection of Personal Data

Within the framework of the tasks entrusted to it, the National Authority for the Protection of Personal Data exercises a series of powers to guarantee the right to privacy and to protect national security. These numerous and varied tasks are generally aimed at providing the legal protection that individuals need in the field of personal data protection, as it works to implement Law No. 18-07 by carrying out the legal procedures established for the processing of personal data and ensuring compliance with the rules established by this law, both with regard to the rights of the data subject and the obligations of the data controller.

This authority, which is a supervisory authority, was created to carry out tasks to ensure this, given the risks surrounding the personal data of individuals due to electronic means of communication, where personal data has become a commodity exploited by large companies for purely commercial purposes.

Referring to Law No. 18-07, we note that its Article 25 outlines the range of powers granted to the National Authority, stating that “The National Authority shall be responsible for ensuring that the processing of personal data complies with the provisions of this law and for ensuring that the use of information and communication technologies does not pose a risk to the rights of individuals, public freedoms and privacy”.

Its duties in this regard include, in particular 1- Granting authorisations and receiving declarations relating to the processing of personal data; 2- Informing data subjects and data controllers of their rights and obligations; 3- Providing consultation to data subjects and data controllers who carry out or experiment with the processing of personal data; 4- Receiving objections, appeals and complaints relating to the carrying out of the processing of personal data and informing the parties concerned; 5- Authorising the transfer of personal data abroad under the conditions established by this Law; 6- Ordering the necessary changes to protect the processed personal data; 7- ordering the closure, withdrawal or destruction of data; 8- proposing any proposal for simplifying and improving the legal and regulatory framework for the processing of personal data; 9- publishing the authorisations and opinions issued in the national register referred to in Article 28 of this Law; 10- establishing cooperation relations with similar foreign authorities, respecting the principle of reciprocity; 11- issuing administrative sanctions in accordance with the provisions of Article 46 of this Law; 12- establishing standards in the field of personal data protection; 13- developing codes of conduct and ethics for the processing of personal data.

In the exercise of its duties, the National Authority shall immediately inform the competent public prosecutor if it observes facts that may constitute a criminal offence.

The National Authority shall draw up an annual report on its activities and submit it to the President of the Republic.

From this article we can conclude that these authorities differ in terms of their purpose. Some are aimed at preventing any violation of personal data, as part of its preventive role. This is achieved by adopting a series of measures, most of which precede the processing operation, as precautionary measures to prevent any breach of personal data, given the sensitive and private nature of such data, and to prevent their use in commercial areas by selling them to companies that may violate this privacy through advertising and statistics.

Its preventive role is manifested in the way it organises the processing, whether by applying the legal provisions set out in Law No. 18-07 or by issuing rules and regulations aimed at implementing

²¹- Article 49(2) of the same law.



the provisions of this Law, such as determining how the person responsible for the processing fulfils his obligations and explaining how to achieve the guarantees granted to the data subject. The preventive role is also evident in the management of information related to the processing of personal data, whether this information relates to the data subjects, to the data controller or to the processing of personal data²².

The Authority has a remedial role, as the legislator has granted it the power to intervene by adopting various mechanisms to achieve the necessary protection of personal data in the event of any aggression or violation of the rights of the data subject. Its remedial role is manifested in the supervisory powers granted to it, which enable it to carry out inspections and investigations into facts that constitute a violation of the provisions of Law No. 18-07²³. It also supervises information relating to the processing of personal data.

On the other hand, the legislator has recognised the punitive role of the authority, which consists in settling disputes between the data subject and the person responsible for the processing. It decides on the appeals and complaints submitted to it by the data subjects and imposes the penalties provided for by Law No. 18-07. The decisions of the authority are not final, as they may be appealed before the Algerian Council of State in accordance with the Civil and Administrative Procedure Code²⁴.

The national authority may, by means of regulations, determine the conditions and guarantees relating to the rights of the person concerned in the fields of freedom of expression, health, employment, historical, statistical and scientific research, remote surveillance and the use of information and communication technologies, in coordination with the sectors concerned²⁵.

The national authority may also decide to secure the transmission, in particular by means of encryption, in the event that the flow of personal data on the network may entail risks for the rights, freedoms and guarantees granted to the persons concerned

According to the internal rules of this authority, it carries out the following tasks:

- Develop and promote national cooperation with various stakeholders in the field of personal data protection.
- Assisting public and private entities to ensure that their processing of personal data is in compliance with the applicable legislation in this area and the provisions of this internal regulation.
- To develop and promote international cooperation with institutions and bodies concerned with the protection of personal data.
- Conclude international agreements and conventions in coordination with the competent national authorities, in accordance with the applicable laws and regulations.
- Organising seminars, forums and study days on subjects related to its tasks.
- Issue journals and publications on subjects related to its functions.
- Stimulating relations with higher education and scientific research institutions in the field of personal data protection.

The National Authority may call upon any qualified person to assist it in its work.

The national authority keeps the national register of personal data protection and records the declarations submitted to it and the authorisations granted by it. The person carrying out the processing must obtain a declaration or authorisation from the national authority in order to process personal data²⁶. This is done in the following way:

1. Prior declaration of processing:

²²- Aouachra Yasser, "The Role of the National Authority for the Protection of Personal Data", Master's thesis in Business Law, Faculty of Law and Political Science, Jijel, 2021-2022, pp. 9 et seq.

²³- Ben Kaara Mustapha Aisha, *supra*, p. 751.

²⁴- Law No. 08-09 of 25 February 2008 on civil and administrative procedure, Official Gazette No. 21 of 23 February 2008, as amended and supplemented by Law No. 22-13 of 12 July 2002, Official Gazette No. 48 of 17 July 2002.

²⁵- See Article 29 of Law No. 18-07.

²⁶- Articles 12 and 25, paragraph 1, of Law No 18-07.



- The request for a prior declaration of processing must be submitted to the national authority by ordinary or electronic means and must be acknowledged within 48 hours. The person responsible for the processing may then commence the work immediately upon receipt of the receipt and under his own responsibility²⁷.
 - The receipt issued by the national authority contains several items of information relating to the person responsible for the processing²⁸, the nature of the data, the recipients and the storage period, including:²⁹
 - The name and address of the person responsible for the processing and of his representative, if any.
 - The nature and characteristics of the processing and the intended purpose(s).
 - A description of the category or categories of persons concerned and the personal data or categories of personal data relating to them.
 - The recipients or categories of recipients to whom the data may be disclosed.
 - The nature of the data to be transferred abroad.
 - The data retention period.
 - The authority with which the data subject may, if necessary, exercise the rights conferred on him/her by the provisions of this Law, as well as the procedures adopted to facilitate the exercise of these rights.
 - A general description enabling an initial assessment to be made of the adequacy of the measures taken to ensure the confidentiality and security of the processing.
 - Any interconnection or other forms of proximity between the data, as well as any subcontracting or transfer to third parties, whether free of charge or not.
 - The national authority must be informed immediately of any modification or erasure of the aforementioned information which affects the processing and, in the event of a transfer of the file, the transferee must complete the declaration formalities provided for³⁰.
 - Data processing operations whose sole purpose is the maintenance of a register open to the public or to any person who can demonstrate a legitimate interest are exempt from the notification requirement, but in this case a data controller must be appointed, whose identity must be made known to the public and who must notify the national authority, and who will be responsible for implementing the provisions relating to the rights of data subjects as provided for in this Act³¹.
 - Granting of data processing authorisations: The National Authority will grant the processing authorisation within 10 days of the submission of the declaration. In any case, the authorisation to process sensitive data³² can only be granted in the public interest and when it is necessary for the legal or regulatory obligations of the person in charge of the processing or after the consent of the data subject in accordance with article 18 of the law 18-07³³.
- Sensitive data has a narrower scope than personal data, and most laws around the world address its

²⁷- Article 13 of the same law.

²⁸- According to Article 3 of Law No. 18-07, the data controller is “any natural or legal person, public or private, or any other body which alone or jointly with others determines the purposes and means of data processing”. This is almost the same definition as that adopted by the Moroccan and Tunisian legislators. Eidani Mohamed and Zerrouk Youssef, “Protection of personal data in Algeria in light of Law No. 18-07”, *Maalem Journal of Legal and Political Studies*, Issue 5, 2018, p. 120.

²⁹- Article 14 of Law No. 18-07.

³⁰- Khaldi Fatiha, “The National Authority for the Protection of Personal Data as a mechanism for protecting the right to privacy under Law No. 18-07,” *Journal of Rights and Human Sciences*, Vol. 13, Issue 4, 2020, p. 48.

³¹- Article 16 of Law No. 18-07.

³²- Sensitive data, according to Article 8 of Law No. 18-07, refers to “personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, or concerning health, including genetic data”. Eidani Mohamed and Zerrouk Youssef, *supra*, at 122.

³³- Mona Al-Ashqar Jabour and Mahmoud Jabour, “Personal Data and Arab Laws: Security Concerns and Individual Rights”, Arab Centre for Legal and Judicial Research, 1st edition, Beirut, Lebanon, 2018, p. 81.



processing because of its association with human rights and fundamental freedoms, such as freedom of belief, non-discrimination, and freedom of expression. This sensitive data is protected by international conventions and national laws³⁴.

Law 18-07 gives the National Authority the right to authorise the transfer of data to a foreign country if the Authority is satisfied that this country guarantees an adequate level of protection of the privacy, freedoms and fundamental rights of individuals, as well as adequate security measures. The national authority must also ensure that the transfer of these data does not pose a risk to public security and the vital interests of the State³⁵.

Exceptionally, the data controller may transfer personal data to another country that doesn't meet the above conditions if the data subject has given his explicit consent, if the transfer is necessary to save the life of a person, to protect the public interest, for the conclusion or performance of a contract, for the implementation of a measure relating to international judicial cooperation, for the prevention, diagnosis or treatment of a medical condition, or in application of a bilateral or multilateral agreement to which Algeria is a party³⁶.

This confirms that Law 18-07 provides the necessary protection for national data that was previously made available to foreign companies operating in Algeria, such as telecommunications companies, Internet service providers and embassies, which receive thousands of visa applications containing personal data that could easily be transferred abroad in the absence of a legal text prohibiting this³⁷.

Supervision of post-processing operations:

Under the provisions of Article 25 of Law 18-07, the National Authority has been entrusted with several tasks, which are as follows:

- The National Authority will, at a later stage, provide consultation to individuals and entities that resort to the processing of personal data or that conduct experiments or experiences that may lead to such processing, in addition to receiving objections, appeals and complaints regarding the implementation of personal data processing and informing their owners of the outcome³⁸.
- It shall inform the data subjects and the persons responsible for the processing of their rights and obligations, including the right to information, the prior communication to the data subject of the identity of the person responsible for the processing and the purposes of the processing, and any other useful information, in particular the recipient, In the case of use of the information on an open network, the data subject must be informed that the information may be circulated on the networks without security guarantees and that it may be subject to unauthorised reading and use by others³⁹.
- Order the necessary changes to protect the personal data processed.
- Order the closure, withdrawal or destruction of data.
- Submit any proposal to simplify and improve the legal and regulatory framework governing the processing of personal data.
- Publishing the authorisations granted and the opinions expressed in the national register referred to in Article 28 of this Law.
- Establishing cooperative relationships with similar foreign authorities, subject to reciprocity.
- Issuing administrative sanctions, where the following administrative sanctions are taken against the person in charge of the processing who violates the provisions of Law 18-07:⁴⁰
 - Warning and formal notice.

³⁴- Article 44 of Law No. 18-07.

³⁵- Article 45 of the same law.

³⁶- Eidani Mohamed and Zerrouk Youssef, *supra*, p. 127.

³⁷- Article 25, paragraphs 3 and 4, of Law No. 18-07.

³⁸- Article 32 of the same law.

³⁹- Article 32 of the same law.

⁴⁰- Hazam Fatiha, "Legal Guarantees for Processing Personal Data (A Study in Light of Law No. 18-07)", *Journal of Ijtihad for Legal and Economic Studies*, Vol. 8, Issue 4, 2019, pp. 293-294.



- Temporary revocation for a period not exceeding one year or permanent revocation of the declaration or authorisation.

- Imposition of a fine⁴¹.

The decisions of the national authority may be appealed before the Council of State⁴².

- Establish standards in the field of personal data protection.

- To lay down rules of conduct and ethics for the processing of personal data⁴³.

- If the national authority detects facts that may constitute a criminal offence, it shall immediately inform the competent public prosecutor, which implies that the authority may refer relevant cases with criminal aspects to the judicial authorities⁴⁴.

- The national authority may, where appropriate and without delay, revoke the declaration or authorisation if, after processing the subject of the declaration or authorisation, it is found that it endangers national security or is contrary to morality or public order⁴⁵.

- It shall also have the power to carry out the necessary investigations and to inspect the premises and places where processing is carried out, with the exception of residential premises. In order to carry out these tasks, the National Authority may have recourse to inspectors who, under the supervision of the public prosecutor⁴⁶, investigate and establish the offences provided for in Law 18-07.

- The members and employees of the National Authority are authorised to observe the erasure of data ordered by the judiciary as an additional penalty⁴⁷.

Section Two: Mechanisms for carrying out its tasks

In the context of the performance of its duties, the Authority shall be equipped with mechanisms that are:

1. Creation of the National Data Protection Register:

Pursuant to Article 28 of Law No. 18-07, a National Register for the Protection of Personal Data shall be established and maintained by the National Authority. This register includes

- Files that public authorities are responsible for processing.

- Files for which private entities are responsible for processing.

- References to laws or published legal texts that provide for the creation of public files.

- Declarations submitted to the national authority and authorisations granted by it.

- Data relating to the files, which are necessary to enable the persons concerned to exercise their rights under this law.

2. Digital portal for the protection of personal data:

On 10/8/2023, the Authority launched an electronic portal that allows public and private entities, as well as natural persons involved in the processing of personal data, to create a personal account to access the portal. Through this portal, they can fill in electronic forms for prior processing notifications, authorisation requests and consultation requests, with the possibility of tracking the status of their requests. This portal is available on the Authority's official website.

Chapter Three: Criminal protection for members of the National Authority for the Protection of Personal Data and the Algerian experience with this Authority

In order to fully exercise the competences entrusted to the National Authority for the Protection of

⁴¹- A fine of up to DZD 500,000 may be imposed if the data controller unlawfully denies the rights of information, access or objection provided for in Articles 32, 34, 35 and 36 of Law No. 18-07 or fails to provide the notification provided for in Articles 4, 14 and 16 of the same law. Article 47 of Law No. 18-07 of 10/06/2018, previous reference.

⁴²- Article 46 of the same law.

⁴³- karana Adel and Bouhedid Fares, "The Tasks of the National Authority for the Protection of Personal Data in Algerian Legislation", *Journal of Legal and Social Sciences*, Vol. 6, Issue 2, June 2021, p. 1058.

⁴⁴- Meriam Loukal, previous reference, p. 1316.

⁴⁵- Article 48 of Law No 18-07.

⁴⁶- Articles 49 and 50 of the same law.

⁴⁷- Article 71 of the same law.



Personal Data, the legislator has provided its members with legal protection during the performance of their duties. This makes it necessary to examine the Algerian experience with this authority.

Section One: Criminal protection for members of the National Authority for the Protection of Personal Data

In order to ensure that the members of the authority carry out their duties effectively, the Algerian legislator has provided them with guarantees. The authority is characterised by its operational independence and its members are not subject to the hierarchy of administrative functions. They do not receive instructions from any ministry and no authority has the right to dismiss them. However, the President and the members of the National Authority may not be employees of or have any interest in institutions or companies operating in the field of telecommunications and data processing, nor may they have any interest in any institution directly or indirectly involved in these activities⁴⁸. In addition, the legislator has provided its members with legal protection.

Subsection One: The Concept of Protection

Linguistically, protection means prevention. To protect something is to prevent it from being attacked, and protection can also refer to compensating an individual for the harm done to them after an attack.

Subsection Two: Manifestations of Criminal Protection

One form of protection is criminal protection. Without prejudice to the penalties laid down in the Penal Code for crimes committed, the Algerian legislator has made special provisions for crimes committed against members of the authority. This includes the definition of offences committed against them during or as a result of the exercise of their duties. This is clearly stated in Law No. 18-07. The crimes that can be committed include obstructing the work of the Authority. In addition to the above-mentioned duties, the legislator, through Law 18-07, requires the person responsible for data processing to cooperate with the national authority. Failure to do so is considered a crime of obstruction of the authority's work and wilful refusal to cooperate with it, which includes:⁴⁹

Obstructing the on-the-spot investigation:

- Refusing to provide members or agents at their disposal with the information and documents necessary to carry out the tasks assigned to them by the national authority, or concealing or removing the aforementioned documents or information.
- Sending information that does not correspond to the content of the file at the time of the request or failing to provide it directly and clearly. This obstruction may take various forms, such as sending incomplete documents, documents containing deliberate errors or documents sent after the deadlines set by the national authority⁵⁰.

Article 61 of the same law states: "Anyone who obstructs the work of the national authority shall be punished by imprisonment for a term of six (6) months to two (2) years and a fine of DZD 60,000 to 200,000, or by one of these penalties only". Actions that also constitute obstruction of the work of the national authority include obstruction of on-site verification. This means the use of any means to prevent the members of the committee from detecting infringements and their evidence, whether the obstruction is physical, such as preventing access to the premises, locking doors or cutting off electricity to prevent the operation of electronic equipment, or automatic, such as refusing to provide passwords. Verification includes all acts of inspection and control, whether manual or automatic, carried out by members of the authorities on data processing systems. In addition, the same law punishes any refusal or failure to provide, or concealment or removal by erasure or deletion, in the case of automatic processing, or destruction and tearing, in the case of manual processing, of the information and documents necessary for the members of the authority

⁴⁸- Mona Al-Ashqar Jabour and Mahmoud Jabour, cited above, p. 154.

⁴⁹- Article 61 of Law No. 18-07 of 10/06/2018.

⁵⁰- Yahia Toumi, "Legal Protection of Personal Data in Light of Law No. 18-07", Journal of the Research Professor for Legal and Political Studies, Vol. 4, Issue 2, 2019, p. 1546.



to carry out their duties⁵¹.

Article 26, paragraph three, of Law No. 18-07 states:

“The President and the members of the National Authority shall enjoy State protection against threats, insults or assaults of any kind to which they may be subjected by reason of or in the course of the exercise of their duties or in connection therewith”.

Law No. 18-07 also imposes penalties on service providers who fail to inform the authority. Article 66 states: “Any service provider who, contrary to the provisions of Article 43 of this Law, fails to inform the national authority and the data subject of a personal data breach, shall be punished by imprisonment of between one (1) and three (3) years and a fine of between DZD 100,000 and DZD 300,000, or by one of these penalties only.” In addition, the law imposes both primary and additional penalties for these offences, as stated in Article 71: “Persons who violate this law may be subject to additional penalties as stipulated in the Criminal Code.” All this is a guarantee for the members of the authorities in the exercise of their duties.

Section Two: The Algerian Experience with the National Authority for the Protection of Personal Data

With the remarkable development of information and communication technologies, the circulation, use and processing of personal data has become more widespread and easier. This has necessitated the establishment of legal, regulatory and technical standards to ensure the protection of such data from risks and breaches. As a result, countries rushed to adopt national legislation and join multilateral agreements to protect and secure such data, while ensuring respect for individual freedom and human privacy.

Algeria has not been left behind. The 2020 Constitution enshrined this right, in particular in Article 47, which affirms that: “The protection of individuals in the processing of personal data is a fundamental right.” Furthermore, on 11 August 2022, the President of the Republic established the National Authority for the Protection of Personal Data, thus moving from the recognition of the right to its guarantee by this authority. In carrying out its duties, the Authority has held a series of meetings and roundtables, which are detailed below.

Subsection One: Roundtables of the National Authority for the Protection of Personal Data

The National Authority has organised several roundtables in order to help public and private entities adapt their activities to the provisions of Law No. 18-07 and to implement its participatory approach. For example, on 20 March 2024, the Authority hosted representatives of the Ministry of Transport and its subordinate bodies. On 27 March 2024, representatives from the energy and mining, environment, renewable energy, industry and pharmaceutical production sectors attended. On 3 April 2024, representatives from the Ministries of Higher Education and Scientific Research, National Education, and Vocational Training and Education attended.

These meetings included presentations by Authority officials on the main legal and technical aspects of personal data protection. At the end of the meetings, the participants praised the Authority’s efforts in organising such events and reaffirmed their commitment to applying the provisions of the law in their data processing activities.

Subsection Two: Meetings of the National Authority for the Protection of Personal Data

In 2024, the authority held several meetings, including five meetings in January and three meetings in February. For example, in the period from 17 January to 22 January 2024, a total of 11 forms related to the processing of declarations and licence applications were received at the single window of the authority. After the conformity check, only one form was accepted for compliance with the provisions of Article 14 of Law No. 18-07, while seven forms were suspended for non-compliance with the aforementioned article⁵². During the meeting scheduled for 24 January 2024,

⁵¹- This is confirmed by Article 8 of Presidential Decree No. 23-147, which states: “The State must protect the users of the National Authority from any form of threat, insult, slander or any kind of attack to which they may be subjected during or because of their duties.”

⁵²- See the minutes of the National Authority’s meeting No. 4 in 2024, published on the following website, visited on 02/03/2024 at 14:00: www.anpdp.dz.



two declaration forms and two licence applications were examined and decided upon, resulting in the issuance of two decisions approving the declarations and two decisions postponing the case. The same procedure was followed at the other meetings.

CONCLUSION

In conclusion, we affirm that the Algerian State's commitment to the legal protection of all personal data is a step forward aimed at preventing any illegal use of these data. The primary mission of the national authority revolves around two main aspects: the first is to protect the privacy of individuals by safeguarding their personal data, whether simple or sensitive, such as health data. The second is to protect national security by preventing the unauthorised cross-border transfer of Algerians' private information, such as genetic data. The Authority is thus a fundamental pillar on the road to an ethical public life, endowed with various supervisory and deterrent functions to prevent violations of the right to privacy. It therefore protects the confidentiality of the personal data of every Algerian citizen, both at home and abroad, in cooperation with public institutions and private bodies.

RECOMMENDATIONS:

Based on this study, we recommend the following:

- International and national efforts for data protection: There is a need for international and national efforts to protect personal data. The role of the national data protection authority as a regulator of personal data is not sufficient in itself. It is essential to be well versed in digital programme and application technologies and, more generally, in the challenges posed by the digital age.
- Raising awareness: Full attention must be given to raising awareness among users of the electronic environment so that they can protect themselves, understand their rights and know the bodies that protect them.
- Amend Article 46 of Law No. 18-07: It is necessary to amend Article 46 of Law No. 18-07, which explicitly states that the decisions of the Authority are subject to appeal before the Council of State. This should be brought into line with the innovations of Law No. 22-13, which amends and supplements Law No. 08-09 on the Code of Civil and Administrative Procedure. Given the central nature of this authority, this amendment makes the Administrative Court of Appeal in Algiers the first instance for cases of annulment, interpretation and assessment of legality, and not the Council of State as was previously the case. This is provided for in Article 900 bis of Law No. 22-13.

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