FRAMEWORKS IN LATINAMERICA: TOWARDS GLOBAL INTEROPERABILITY

THE COLOMBIAN EXPERIENCES AND CHALLENGES

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Constitutional development as a fundamental right (art. 15 C.P.C)

First decision by the Constitutional Court 1992. (tutela mechanism of protection)

Case law developments

2008

Constitutional Court decision C-1011 de 2008. It Limited the scope of the Ley 1266 de 2008. Referred only to personal data for financial risk assessment

Aproval by the Congress of the First Estatutory Law on Data Protection: Ley 1266 de 2008

2009

Ley 1273 de 2009 criminal offences regarding data protection. Prison between 48 to 96 months

2010

Approval by the Congress of a General Statutory Law on data Protection

2011

Revision by the Constitututional Court and Approval

Drafting of the secondary legislation and the guidelines for the implementation of the law

Revision of the national and international developments

STATE OF ART: CURRENT DEVELOPMENTS
INTERNATIONAL CONTEXT

European Council: Convention: for the Protection of Individuals with regard to Automatic Processing of Personal Data

Directive 95/46/EC of the European Parliament and of the Council of 24th October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

Madrid Resolution: Joint Proposal for a Draft of International Standards on the Protection of Privacy with regard to the processing of Personal Data

ONU Resolución: Resolución 45/95 of The General Assembly, 14th of December 1990

Legislative developments (UE, Argentina, Uruguay, Israel, México)
Integral system for data protection compatible in a global context

Effective protection for the data subjects

«International recognition» for an adequate level of protection

Adequacy of data Protection by third countries

Development of the services sector
CONTENT

- Binding Corporate Rules
- Objetives, Scope and definitions,
- Principles
- Special categories of data (sensitive data)
- Rights of the data subject and requirements for the treatment
- Administrative procedures
- Duties and obligations of the data controller and the processor
- Controls and surveillance mechanism
- Data transfer to third countries (requirements)
- Transicion
The issuing of the law in itself does not guarantee an adequate and **effective level of protection** for the data subject.

**Different approaches** in legislations could create a risk for the free flow of personal data across frontiers.

**Incentives** must be created to move from the simple compliance of minimum requirements by law to real ways of self-regulations.

**Cooperation** among countries and international organizations must be encouraged to procure harmonization and compatibility in the systems of protection.
Adequate and effective level of protection is achieved not only through a law

- **Education** for all the people involved in the treatment including: data-subject, data controller and processor and providing reasonable means for individuals to exercise their rights.

- Promoting **public awareness** about the rights of data subjects

- **Cooperation** between public and private sector to implement strategies to create a balance between the level of protection and the free flow of data.

- Moving from a model of mere surveillance and control to cooperation under the application of the **basic principles**
Adequate and effective level of protection is achieved not only through a law.

**Education:**

a) Implement communication strategies to promote the knowledge of the law among data subjects;

b) Public campaign for the knowledge of the basic rights and duties;

c) Educate individuals about how they can report violations and how remedies can be pursued.

**Cooperation:** on the bases of the different types of data

- Governmental entities
- Non governmental entities
- Active subjects (surveillance)
- Passive subjects (data controllers)
- Consumer associations
- Industry and services sector
Difference in national legislations could create a risk for the free flow of personal data across frontiers

- Automatic processing and transborder flows of personal data create new forms of relationships among countries and require the development of compatible rules and practices.

Transborder flows of personal data contribute to economic and social development

- Avoid the development of secondary legislation and administrative requirements that would exceed requirements for an effective protection

- Restrictions for certain categories of personal data are legitimate (sensitive data) when not equivalent protection is not granted.

- Proportional, reasonable and adequate sanctions and remedies in case of failure to comply with requirements.
Difference in national legislations could create a risk for the free flow of personal data across frontiers.

New opportunities but also higher demands in terms of adequacy.

FREE TRADE AGREEMENTS

Negociation in progress
- South Korea
- Panama
- Turkey

In force
- Canada, G3
- Chile, EFTA
- TN (Honduras, Guatemala, el Salvador)
- CARICOM, CAN, MERCOSUR

Negociated
- United States
- European Union
Incentives must be created to move from the compliance of minimum requirements to real ways of self-regulations.

Application of the accountability criteria: A data controller should be accountable for complying with the principles, obligations and requirements set up. Defining the application of this criteria and the scope for the international flow of data.

Incentives should be created to encourage self-regulation to go **beyond** the minimum levels by law.

- Reduction of administrative procedures
- Application of sanctions
Cooperation among countries and international organizations must be encouraged to achieve harmonization and compatibility in the systems of protection.

The problems of developing safeguards for the individual cannot be solved exclusively at the national level.

- Information exchange: regarding regulatory practices and administrative procedures
- Technical assistance from countries with more experience in privacy and data protection
- Harmonization at the regional and international level regarding regulations and administrative procedures: (i.e OEA)
- Cooperation among control and surveillance authorities: cross border cooperation in investigation and enforcement

Consensus on the fundamental principles at the international level

more detailed, binding international agreements
Registration of databases: to make it a flexible process since it does not mean in itself a way of effective protection and control.

Framework for the corporate binding rules system: enables adaptation of the legislation to the specific characteristics of data processing in a certain sector, allowing the creation standards specifically adapted to the needs of that sector, and thus facilitating their observance.

Guidelines for sectorial procedures according to the types of data.
BINDING CORPORATE RULES: SELF REGULATIONS

Facilitate the application of the regulatory framework

REQUIREMENTS TO MAKE IT PRACTICAL

- Compliance of minimum requirements of the Law
- plus in terms of security and protection of the data subject rights
- System of binding corporate rules with different programs to be authorized by the persona data protection authority

DATA SUBJECT

DATA CONTROLLER
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