



## **The Effectiveness of Law No. 18/07 in the Protection of Personal Data**

**LAHRECHE Ayoub Toumi**

Laboratory of Law and Political Sciences  
Amar Telidji University, Laghouat, Algeria  
Email: [lahrecheayoubtoumi@gmail.com](mailto:lahrecheayoubtoumi@gmail.com)

**AOUF Slimane**

Laboratory of Law and Society  
Ahmed Draia University, Adrar, Algeria  
Email: [aoufslimane84@gmail.com](mailto:aoufslimane84@gmail.com)

### **Abstract:**

*This study aims to evaluate Law No. 18/07 concerning the protection of natural persons in relation to the processing of personal data, given the risks associated with the collection and processing of personal data.*

**Keywords:** *personal data, evaluation, rights, obligations, sanctions.*

## **L'efficacité de la loi n° 18/07 dans la protection des données à caractère personnel**

### **Résumé :**

*Cette étude vise à évaluer la loi n° 18/07 relative à la protection des personnes physiques à l'égard du traitement des données à caractère personnel, compte tenu des risques liés à la collecte et au traitement des données à caractère personnel.*

**Mots clés :** *données à caractère personnel, évaluation, droits, obligations, sanctions.*

## **Introduction**

The modern era has witnessed significant developments resulting from the advent of information and communication technology, which has triggered a digital revolution affecting all aspects of life and positively impacting societies and states through its adoption in both public and private institutions, thereby truly embodying the age of digitalisation. Like many other countries, Algeria has also adopted information and communication technology across various sectors, which has significantly contributed to the improvement of public service quality by utilising electronic processing systems for managing data and information. However, the misuse of this technology has led to the emergence of cybercrimes that now threaten information security and the privacy of individuals and communities. Electronic information has become particularly vulnerable, primarily due to the virtual environment's facilitation of the violation of professional secrecy, espionage on individuals, disclosure of personal information, and defamation for blackmail or exposure. All of this and more have proven that the presence of private data on the digital network is not secure. This situation has prompted most criminal legislations, including that of Algeria, to confront these crimes. In this context, the Algerian legislator issued Law No. 18/07 to address them. Therefore, the problem that arises and seeks an answer within the framework of this study is:

**To what extent has Law No. 18/07 contributed to the protection of individuals' data and information in the virtual world?**



To answer this problem, we have divided our study into three main sections:

- **The first section:** Personal data.
- **The second section:** Legal Aspects of Personal Data Protection.
- **The third section:** Sanctions for Breaches of Personal Data.
- **The first section: Personal data**
- In this section, we will define personal data and outline the types of data that fall within its scope.

## 1. Personal data

### 1.1. Definition of personal data

The Algerian legislator defined personal data in Article 3, Paragraph 1 of Law No. 18/07 as:<sup>1</sup>

"Any information, regardless of its medium, relating to an identified or identifiable person, hereinafter referred to as the data subject, either directly or indirectly, in particular by reference to an identification number or to one or more elements specific to his or her physical, physiological, genetic, biometric, technical, economic or social identity."

As for the data subject, the legislator defined him or her in Paragraph 2 of the same article as:

"Any natural person to whom the personal data that are the subject of processing relate."

It can thus be concluded that personal data encompasses any information relating to a natural person or their identity.

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<sup>1</sup> Law No. 18/07 of 10 June 2018, on the Protection of Natural Persons in the Processing of Personal Data, Official Gazette No. 34, 10 June 2018.

## **1.2. Types of Personal Data**

Referring to Article 3, Paragraph 1, it can be concluded that personal data includes the following: name and surname, date of birth, civil status, place of residence, personal photograph, fingerprint, genetic fingerprint, criminal record, genetic and health data, national identification number, social security number, bank account number, telephone number, email address, religious and political affiliation.<sup>2</sup>

## **2. Legal Aspects of Personal Data Protection**

The processing of personal data, regardless of its source or form, must be carried out with respect for human dignity, privacy, and public freedoms, and must not infringe upon the rights, honour, or reputation of individuals.<sup>3</sup> Accordingly, in this section, we will address the principles of personal data protection, the most important rights of individuals whose personal data is subject to automated processing, and the obligations of the person responsible for electronic processing.

### **2.1. Principles of Personal Data Protection**

The Algerian legislator has established these principles in Articles 7 to 21 of Law No. 18/07. Thus, the realisation of the right to the inviolability of personal data in electronic processing requires that this process be governed by a set of principles ensuring that the personal rights and freedoms of individuals are not violated. These principles include

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<sup>2</sup> Meriem Loukal, "International and National Legal Protection of Personal Data in the Digital Space in Light of Law No. 18/07 on Data Protection," *Journal of Legal and Political Sciences*, University of El Oued, vol.. 10, no. 01, Algeria, 2019, p. 1309.

<sup>3</sup> Article 02 of Law No. 18/07, previously cited.



obtaining prior consent, ensuring data quality, and adhering to specific procedures that precede electronic processing.<sup>4</sup>

### *2.1.1. Prior Consent and Data Quality*

Article 7 of Law No. 18/07 requires the explicit consent of the data subject before electronic processing, unless otherwise provided by law. The law also stipulates that electronic processing must be conducted lawfully and not through fraudulent means. Furthermore, the processing must be carried out for specific and clear objectives related to the subject of the processing.

The Algerian legislator also requires the accuracy of the personal data being processed, which must be correct and kept up to date. Additionally, the reasons for data retention must be legitimate, and the retention period should be as brief as possible. It is worth noting that the same law, in its fifth chapter (Articles 38 to 45), outlines the obligations of the person responsible for electronic processing, including confidentiality and integrity of processing, obligations related to electronic certification and signature services, the field of electronic communications, and the inviolability of transferring data to foreign countries.<sup>5</sup>

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<sup>4</sup> Fatima Nessakh, "Protection of Personal Data in the Technological and Digital Age under Law No. 18/07," *Journal of Communication and Journalism*, National School of Journalism and Information Sciences, vol. 08, no. 02, Algeria, 2021, p. 56.

<sup>5</sup> Meriem Loukal, previously cited, p. 1310.

### *2.1.2. Procedures Preceding the Electronic Processing of Personal Data*

The Algerian legislator has set out the procedures preceding the electronic processing of personal data in Articles 12 to 21 of Law No. 18/07. This process is subject to prior declaration to the National Authority for the Protection of Personal Data, either by ordinary or electronic means, with a receipt of deposit issued within 48 hours. The declaration must include the name and address of the person responsible for processing, the nature and characteristics of the processing, the intended purpose or purposes, the type of data to be transferred to foreign countries, the duration of data retention, a general description allowing for a preliminary assessment of the adequacy of the measures taken to ensure the confidentiality and security of processing, and any interconnection or other forms of linkage.<sup>6</sup>

In addition to the declaration, the Algerian legislator requires authorisation from the National Authority for the Protection of Personal Data if, upon examining the submitted declaration, it is determined that the intended processing poses a manifest risk to the respect and protection of privacy and the fundamental rights and freedoms of individuals. The authority must provide reasons for its decision, which must be communicated to the person responsible within ten days following the date of the declaration's submission.

Authorisation is granted for the processing of sensitive data for reasons related to the public interest or the protection of the vital interests of the data subject, including the processing of genetic data. The national authority must

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<sup>6</sup> Fatima Nessakh, previously cited, p. 58.



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make its decision within two months from the date it is notified, with the possibility of extending this period for the same duration by a reasoned decision of its president. Accordingly, a lack of response from the authority within the specified period is considered a rejection of the request.<sup>7</sup>

## **2.2. Rights of the Data Subject and Obligations of the Person Responsible for Electronic Processing**

The Algerian legislator has granted the data subject a set of rights while imposing a series of obligations on the person responsible for processing personal data.

### ***2.2.1. Rights Enjoyed by the Data Subject in Electronic Processing***

The Algerian legislator has set out these rights in Chapter Four, Articles 32 to 37 of Law No. 18/07. These rights include: the right to information, the right of access, the right to rectification, the right to object, and the right to prevent direct prospecting.<sup>8</sup>

### ***2.2.2. Obligations of the Person Responsible for Electronic Processing of Personal Data***

The Algerian legislator has established the obligations of the person responsible for the electronic processing of personal data in Chapter Five, Articles 38 to 41 of Law No. 18/07. The legislator requires the person responsible for electronic processing to preserve the confidentiality and integrity of the processing by protecting personal data from accidental destruction through the adoption of appropriate

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<sup>7</sup> Fatima Nessakh, previously cited, p. 58.

<sup>8</sup> Law No. 18/07, previously cited.

measures, and obliges them to maintain professional secrecy even after the termination of their duties.<sup>9</sup>

### **3. Sanctions Resulting from Breaches of Personal Data**

The Algerian legislator has provided a range of sanctions for the person responsible in the event of a breach of obligations, as well as for others who commit a cybercrime. These sanctions are divided into administrative and criminal sanctions.

#### **3.1. Administrative Sanctions**

The Algerian legislator set out administrative sanctions in Chapter Six, Articles 46 to 48 of Law No. 18/07. These sanctions include: warning, formal notice, temporary withdrawal of the declaration or authorisation receipt for a period not exceeding one year, permanent withdrawal of the declaration or authorisation receipt, and fines.<sup>10</sup> In the case of repeat offences, the person responsible for processing who, without legitimate reason, refuses the rights to information, access, rectification, or objection, is punishable by imprisonment from two months to two years and a fine ranging from 20,000 DZD to 200,000 DZD, or by one of these two penalties. The national authority may also withdraw the declaration or authorisation receipt if, after processing, it is found to affect national security or to be contrary to morals or public order.<sup>11</sup>

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<sup>9</sup> Fatima Nessakh, previously cited, p. 62.

<sup>10</sup> Fatima Nessakh, previously cited, p. 63.

<sup>11</sup> Law No. 18/07, previously cited.



### 3.2. Criminal Sanctions

The Algerian legislator has outlined these sanctions in Chapter Three of Law No. 18/07, specifically Articles 54 to 74, where penalties are heightened in the event of breaches of personal data, whether by the person responsible, the processor, or by others. These sanctions are divided into custodial penalties and financial penalties. Such penalties are imposed on anyone who violates Article 7 of Law No. 18/07, which includes cases of the absence of explicit consent from the data subject, as well as the processing of data despite the data subject's objection, primarily when the processing is intended for commercial advertising, cases involving false declarations, or the collection of data in a fraudulent, dishonest, or unlawful manner.

In this regard, it is worth noting that the Algerian legislator has granted the national authority the right to conduct investigations and inspections of premises and locations where processing is carried out, as stipulated in Articles 49 to 53 of Law No. 18/07. The authority also has the right to carry out inspections through judicial police officers and agents, under the supervision of the public prosecutor.<sup>12</sup>

### Conclusion

Through the evaluation of Law No. 18/07 concerning the protection of natural persons in the processing of personal data, it is evident that the Algerian legislator has acted

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<sup>12</sup> Law No. 18/07, previously cited.

judiciously and accurately by identifying all violations that may affect personal data, ensuring that no offender escapes punishment, whether the person responsible for processing or any other cybercriminal. This law has also proven to be highly effective in practice in addressing all forms of infringement upon personal data, which is particularly evident in light of the previous crisis regarding the principle of legality in this domain.

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