



Doc. 14432

19 October 2017

Technological convergence, artificial intelligence and human rights

Reply to Recommendation¹: Recommendation 2102 (2017)
Committee of Ministers

1. The Committee of Ministers has examined closely [Recommendation 2102 \(2017\)](#) of the Parliamentary Assembly on “Technological convergence, artificial intelligence and human rights”. The Committee of Ministers considers that technological convergence and artificial intelligence have brought unprecedented benefits to our societies and are to be seized. It recalls the contribution of progress in sciences and technologies in the biological and medical field to the improvement of human health and quality of life. However, the increasing possibilities they provide to influence and control human life and the implications for human beings of a misuse of such knowledge and technologies must also be stressed. It is therefore crucial that care is taken in this field to fully respect the fundamental rights and freedoms guaranteed to any individual. The Committee of Ministers therefore concurs with the general thrust of the recommendation and welcomes the vigilance and awareness called for in this area.

2. In the context of the Council of Europe, several fields of activity are of particular relevance to this recommendation. The Committee on Bioethics (DH-BIO) carries out extensive work with a view to protecting human dignity and individual rights in the field of biomedicine, in particular with respect to new scientific and technological advances. In this respect, and subject to the decision of the Committee of Ministers on its terms of reference for the next biennium, the DH-BIO intends to develop a strategic action plan, as referred to in paragraph 5 of the Assembly’s recommendation.

3. This strategic action plan would be based on the outcome of the Conference to be organised on the occasion of the 20th anniversary of the Convention on Human Rights and Biomedicine (Oviedo Convention) in October 2017, under the auspices of the Czech Chairmanship of the Committee of Ministers. The objectives of this strategic action plan will be to ensure, in particular, that: (1) human rights of particularly vulnerable groups are better protected; (2) human rights challenges raised by new technologies, in particular in the fields of genetics and genomics, are addressed and (3) appropriate education and training of professionals concerned are facilitated.

4. The conference will address human rights challenges raised by developments in the field of genetics and genomics, technologies applied to the brain and big data in the health field. It will be informed in particular by two studies on challenges for children’s rights raised by developments of biology and medicine as well as on the outcome of the high level seminar on international case law in bioethics organised at the European Court of Human Rights, in December 2016, under the auspices of the Cypriot Chairmanship of the Committee of Ministers. The Committee of Ministers considers that this event will provide an opportunity to debate the difficulties faced by the legislator, underlined by the Parliamentary Assembly, in view of providing a contribution, in terms of human rights, to the progress of science and technologies.

1. Adopted at the 1297th meeting of the Ministers’ Deputies (17 October 2017).



5. The Committee of Ministers agrees with the Assembly that there is a strong need for public debate in this area, which is also advocated in Article 28 of the Oviedo Convention.² In this respect, and as part of its initiatives to address human rights challenges raised by emerging technologies, the DH-BIO will develop guidance on how to promote public discussion and consultation on fundamental questions raised by the developments of biology and medicine.
6. The Committee of Ministers has taken note of the Assembly's invitation (paragraph 7.1) to finalise without further delay the modernisation of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, hereafter 'Convention 108'). In this respect, it recalls that it transmitted the draft amending Protocol to the Assembly for an opinion on 5 July 2017, although negotiations are still ongoing within the Committee of Ministers. The Committee is thus well aware of the urgency. The modernisation proposals have been carefully drafted with a view to responding to emerging challenges in the field of data protection and would also assist lawmakers in adapting to the speed of scientific and technologic evolution, as mentioned in the recommendation. Further details on the proposed amendments aimed at modernising the Convention, appear in the Appendix to this reply.
7. In response to paragraph 7.2 of the recommendation, the Committee of Ministers would recall that the new Council of Europe Disability Strategy in Nicosia, Cyprus (27-28 March 2017) aims at achieving equality, dignity and equal opportunities for persons with disabilities. This requires ensuring independence, freedom of choice, full and active participation in all areas of life and society. The Committee of Ministers would underline that further work in this field, especially on accessibility and universal design, could aim at providing guidance on how the persons with disabilities can have access to and fully benefit from developments in the age of use of care robots and assistive technologies, without discrimination and equally with others.
8. In relation to paragraph 8, the Committee of Ministers notes the reference to the "*social and ethical consequences*" of technological convergence. The Big Data guidelines³ adopted by the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD) are a concrete illustration of the innovative and adaptive response to those challenges. The Guidelines precisely underline the need to guarantee an "*ethical and socially aware use of data.*"
9. Regarding paragraph 9, calling to strengthen transparency and operators' accountability, the Committee of Ministers would signal that this is another key feature of the modernisation of Convention 108, with, *inter alia*, a new article on the "transparency of the processing", which details the obligations of the controller, aimed at ensuring a fair and transparent processing of the personal data. The Committee of Ministers would also recall its Recommendation CM/Rec(2010)13 on the protection of individuals with regard to automatic processing of personal data in the context of profiling as well as its Recommendation CM/Rec(2016)3 on human rights and business which deals with the corporate social responsibility of private actors vis-à-vis the exercise of fundamental rights and freedoms. The Committee of Ministers would furthermore inform the Assembly that the T-PD will focus more specifically on the data protection implications of artificial intelligence in its work for the biennium 2018-2019.
10. The Committee of Ministers has noted the various proposals aimed at drawing up guidelines in a wide variety of areas, including private and family life, profiling, location tracking or the assistance provided to elderly people. Some of these will be addressed by the activities mentioned above. With regard to the latter question, it would invite its Steering Committee for Human Rights to take into consideration the concerns expressed by the Assembly when addressing, in 2018, the Recommendation CM(2014)2 on the promotion of human rights of older persons, adopted by the Committee of Ministers in 2014.
11. Finally, the Committee of Ministers agrees with the Assembly on the need for continued close co-operation with other international organisations and stakeholders with a view to exchanging good practices and ensuring as much as possible consistency of the legal framework at the international level.

2. The Oviedo convention calls to Parties to see to it that "the fundamental questions raised by the developments of biology and medicine are the subject of appropriate public discussion in the light, in particular, of relevant medical, social, economic, ethical and legal implications, and that their possible application is made the subject of appropriate consultation."

3. Guidelines on the protection of individuals with regard to the processing of personal data in a world of Big Data, adopted on 23 January 2017.

Appendix

Comments by the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD)

1. The Ministers' Deputies agreed at their 1286th meeting (10-11 May 2017) to communicate [Recommendation 2102 \(2017\)](#) of the Parliamentary Assembly of the Council of Europe on "Technological convergence, artificial intelligence and human rights" to the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, for information and possible comments.
2. The Bureau of the Consultative Committee welcomes the adoption of [Recommendation 2102 \(2017\)](#) and emphasises the importance of addressing challenges to human rights which emerge in the context of technological convergence and artificial intelligence.
3. The unprecedented benefits for our societies of technological convergence and artificial intelligence are to be seized, in full respect of the fundamental rights and freedoms guaranteed to any individual. The vigilance and awareness called for by the Parliamentary Assembly in its recommendation are welcome and should pave the way to further in-depth work on those challenges, in particular with regard to the right to data protection.
4. The Bureau of the Consultative Committee first and foremost commends the call of the Parliamentary Assembly (paragraph 7.1) to finalise without further delay the modernisation of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, hereafter 'Convention 108') and regrets that six years after the inception of this crucial work, the modernisation has not yet been achieved.
5. The difficulty for lawmakers to adapt to the speed of scientific and technologic evolution, underlined in the recommendation, is real. The modernisation proposals have been carefully drafted with a view to standing the test of time and aim at responding to emerging challenges in the field of data protection.
6. The Bureau of the Consultative Committee fully shares the opinion of the Parliamentary Assembly on the importance of safeguarding human dignity in the 21st century, and what it implies. Human dignity is the basic principle underlying human rights law and securing it in the digital age was at the core of the modernisation work of Convention 108. The proposed Preamble stresses that "[...] it is necessary to secure the human dignity and protection of the human rights and fundamental freedoms of every individual and, given the diversification, intensification and globalisation of data processing and personal data flows, personal autonomy based on a person's right to control of his or her personal data and the processing of such data".
7. In relation to paragraph 8, the Bureau of the Consultative Committee notes the important reference to the "social and ethical consequences" of technological convergence. Hyper connectivity and the volume of personal data that it entails are of concern and data protection principles will have to continue to evolve and adapt to new challenges. The Big Data guidelines⁴ adopted by the Consultative Committee are a concrete illustration of the innovative and adaptive response to those challenges. The Guidelines precisely underline the need to guarantee an "ethical and socially aware use of data". This general guidance will have to be complemented by sector-tailored provisions adapted to specific contexts and this is one of the objectives of the Committee in the years to come.
8. The Bureau of the Consultative Committee also refers to the introduction of privacy by design, privacy by default, privacy-impact assessments and new security obligations in the modernisation proposals of Convention 108 as another important response to the challenges underlined by the Parliamentary Assembly in its recommendation.
9. Regarding the specific call of the Parliamentary Assembly to address the "social and ethical consequences related to the field of genetics and genomics", the Bureau of the Consultative Committee underlines its excellent and long-standing co-operation with the Committee on Bioethics, and the willingness of both committees to continue working together on common challenges in those particular fields.
10. Regarding paragraph 9, the Bureau of the Consultative Committee fully supports the call to strengthen transparency and operators' accountability. This is another key feature of the modernisation of Convention 108, with a new article on the "transparency of the processing", which details the obligations of the controller,

4. Guidelines on the protection of individuals with regard to the processing of personal data in a world of Big Data, adopted on 23 January 2017.

aimed at ensuring a fair and transparent processing of the personal data. Furthermore, the proposed article on “additional obligations” prescribes that all appropriate measures to comply with the obligations of the Convention have to be taken, and highlights the necessity of being able to demonstrate such compliance. Two other particular aspects of the modernisation proposals bring a complementary element of response to the call of the Parliamentary Assembly, and are of particular relevance in a context of technological convergence and artificial intelligence. The first one is the right of the data subject not to be subject to a decision significantly affecting him or her based solely on an automated processing of data without having his or her views taken into consideration. The second novelty is the right for the data subject to obtain on request knowledge of the reasoning underlying data processing where the results of such processing are applied to him or her. The Bureau of the Consultative Committee also recalls the recommendation adopted by the Committee of Ministers on the protection of individuals with regard to automatic processing of personal data in the context of profiling.⁵

11. The protection of individuals with regard to the processing of personal data will require that the comprehensive protective system of the modernised Convention be complied with, starting with the legal basis for the processing, and the importance of providing to data subjects, where consent is the legal basis, the necessary conditions to express a consent that is free, specific, informed and unambiguous.

12. The Bureau of the Consultative Committee thus once again underlines the need for a rapid adoption of the modernised Data Protection Convention, which in its proposals contains several responses to some of the challenges posed by technological convergence and artificial intelligence. The Committee of Convention 108 will continue to tackle such challenges, and proposes in its 2018-2019 work plan to focus more specifically on the data protection implications of artificial intelligence.

13. Finally, the Bureau of the Consultative Committee welcomes the call for close co-operation with other institutions, organisations and stakeholders and commits to continue its active engagement with other key actors in the promotion and development of data protection standards to address new challenges.

5. Recommendation [CM/Rec\(2010\)13](#) on the protection of individuals with regard to automatic processing of personal data in the context of profiling.