THE LEGAL PROTECTION OF PERSONAL DATA IN MACAU

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1. Introduction

The threat to privacy posed by the new technologies, namely through the collection and manipulation of personal data and information, has led to the creation in many jurisdictions not only of special legislation on that collection and use but also of special authorities in charge of monitoring its application.

In Macau, however, it was not yet created, as prescribed in the Civil Code (article 79°, 3), the entity in charge of monitoring the collection, storing and use of personal data. Furthermore, some aspects of the problem, e.g. the transfer of personal data to foreign jurisdictions, are not regulated. Nevertheless, we can find, scattered throughout the legal system, a host of rules that guarantee some degree of protection to the privacy of personal data and information. The aim of this article is to provide a very brief overview of the protection granted to personal data by the Macau law. Given the nature of the article we won’t delve in technicalities and whoever wishes to know fully the meaning of the legal rules mentioned below should check the quoted statutes.

2. The constitutional law and the international law

A generic right to the “intimacy of private life” is granted to the Macau residents by article 30, II, of the Basic Law, the Macau mini-constitution (indeed a law enacted by the People’s Republic of China National People’s Congress to rule the Special Administrative Region of Macau created on 20 December 1999).

On the international law front, the United Nations Covenant on Civil and Political Rights is applicable, its article 17° establishing that:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or

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attacks.”

3. The Civil Code

However it is in the Civil Code, enacted in 1999, that are located some of the most significant legal rules protecting data privacy. The matter is regulated in the personality rights chapter (articles 67° - 83°).

The Civil Code grants to every human being without discrimination (and not only to residents, as it happens in the Basic Law) exclusive rights on every aspect of his/her personality: life, personal name, reputation, physical and psychological freedom, image, etc. At the same time the law regulates the circumstances in which these rights may be lawfully waived or limited.

It should be stressed that even aspects of the human personality not explicitly regulated in the law deserve the same legal protection. As a matter of fact, according to a construction that is supported by the legal doctrine and grounded on the general personality right (article 67°), the latter unfolds itself in as many specific personality rights as necessary to protect every aspect of a human personality under threat. Thus, from that generic personality right we could immediately draw some kind of protection to personal data privacy. However, in such field, the Code goes further and explicitly regulates several facets of privacy.

First of all article 74°, consecrates a generic duty to respect other’s “intimacy of private life”.

Secondly, article 79°, specific on personal data, prescribes:
1. The duty of, when collecting personal data for computer processing, to do it in strict obedience to the purposes of the collection and to inform the persons concerned about such purposes;
2. The right of every person to know about any data on himself or herself stored in any computer databases and the purposes of the collection, as well as the right to demand the rectification or update of such data, except for what is regulated about the secrecy of criminal procedures;
3. The creation of an authority in charge of monitoring the collection, storing and use of computerised personal data, authorising the access to a third person’s personal data contained in any computerised database and authorising the interconnection of computerised databases.

This authority, as we said above, has not been established yet.

In third place other articles that were not primarily devised to face the dangers of
personal data collection and processing do also grant exclusive rights over subject mater that may also be comprehended under the concept of personal information. The main examples are:

1. the right to one’s own biography (article 78°), i.e. the exclusive right on the publication and use of the events of one’s own personal history;
2. the right to one’s personal truth (article 81°), i.e. the right to be protected against false imputations, irrespective of their being defamatory or not;
3. the right to one’s own image and speech, that, , with a few exceptions, makes dependent on one’s authorisation the taking and reproduction of one’s picture or spoken words (article 80°).

The offence or mere threat to any of the various rights granted by the Civil Code is a tort. The right owner may therefore use every legal means to avoid the offence, or to stop it. He/she can also claim an indemnity for any damage endured, the Macau law recognising both the economic and the non-economic damage.

4. The Criminal Code

Some of the values that are behind the personality rights deserve also protection by the criminal law, which is mainly contained in the 1995 Criminal Code. Similarly to what happens in the Civil Code, an article on personal data in the Criminal Code follows an article on the generic right to the intimacy of private life.

Article 186° punishes with imprisonment up to 2 years or fine up to 240 days² various acts of interference in another’s private life, e.g.:

1. the interception, recording, use, transmission or disclosure of a private telecommunication;
2. the taking, recording, use or disclosure of another’s picture or “intimate places or objects”;
3. the eavesdropping;
4. the disclosure of facts related with another’s private life or health condition.

The next article in the Code (article 187°) punishes with imprisonment up to 2 years or fine up 240 days “whoever creates, keeps or uses a computerised base of data on political or philosophical ideology, religion, race or private life of individuals which allows the identification of the data concerning each individual”.

The limit of the penalties is raised in 1/3 whenever the crime is committed

² Criminal fines are established in “days”, each day being worth between 50 and 10 000 patacas (MOP, the Macau currency). It is a discretionary power of the court to establish case by case the value of each “day”.
through the media or with the intention of achieving any reward, or of producing a
damage to any person (article 192°). On the other hand the start of the criminal
proceedings for the crime in article 186° depends on the complaint of the victim
(article 193°).

Other articles in the Criminal Code, e.g. establishing secrecy duties, contribute
to the protection of personal information and privacy. For example:
1. the disclosure or use of another’s secret is punished with imprisonment up to 1
   year or fine up 240 days (articles 189° and 190°). When committed by a civil
   servant, regarding information acceded in the course of his/her office, the penalty
   may reach imprisonment for 3 years (article 348°);
2. the unauthorised taking or use of another’s picture or speech is punished with
   imprisonment up to 2 years or fine up 240 days (article 191°).

5. Other legislation

Combining the legal system we find many other rules that directly or indirectly
add to the protection of data privacy, typically regulating the collection and use of
evidence, prescribing obligations of secrecy, or regulating and limiting the access to
certain data in the possession of certain entities, namely administration departments.
The infringement of such provisions may be a tort, a crime, an administrative
infringement or a mere disciplinary offence.

We list below a few examples:
1. As an exception to the general rule of transparency and openness of the
   administration, the latter may refuse the access to its archives and files wherever
   the intimacy of persons is at stake (Administrative Procedure Code, article 67°, 1, c));
2. Before the trial the media can’t publish the identity of the victims of sexual crimes,
   or of crimes against one’s honour or privacy. Whenever the victim is younger than
   16, not even after the trial may the media do the said publication. The
   infringement is taken as a crime of disobedience and punished with imprisonment
   up to 1 year or fine up to 120 days (Criminal Procedure Code, article 78°, 2, c),
   and Criminal Code, article 312°);
3. As a general rule, the evidence collected through intrusion in one’s privacy is void.
   There are exceptions, however, but the law regulates the collection of evidence
   with great detail in order to avoid abuses against privacy (Civil Procedure Code,
   articles 433° - 547°, and Criminal Procedure Code, articles 113°, 3, and 156° -
   175°);
4. The law regulates the registration of individual criminal data, namely what can be
   recorded, who can have access to it, namely who may ask copy of the individual
   data, and how is that access done, and when and how must the data be cancelled
   (Decree-Law 27/96/M, of 3 June, as amended by DL 87/99/M, of 22 November);
5. The law regulates as well who may have access to some of the data recorded in the civil registry, e.g. concerning the identity of the biological parents of adopted children (Civil Registry Code, articles 159° and 160°). The civil registry is the administration department in charge of the mandatory registration of births, weddings, deaths and other events related with the personal life of individuals.