

A29 WP- 9th Annual Report

Chapter: MAIN DEVELOPMENTS IN MEMBER STATE COUNTRIES – Slovakia

The Slovak Republic became a member state of the European Union on May 1st 2004. The Office obtained new official name effective as of 1 May 2005 - the Office for Personal Data Protection of the Slovak Republic (Hereinafter referred to as the “Office”) by the Act No. 90/2005 Coll. which amended Act No 428/2002 Coll. on personal data protection (Hereinafter referred to as the “PDP Act ”).

1. Implementation of Directives 95/46/EC and 2002/58/EC and other legislative developments

Implementation of Directive 95/46/EC

The latest amendment of the PDP Act was considered to be an adequate response to the comments raised by the European Commission in the previous years. It became effective on May 1, 2005.

Despite of this fact the Office for Personal Data Protection of the Slovak Republic asked the European Commission, Directorate-General Justice, Freedom and Security Data Protection Unit to review the amended PDP Act in detail. The aim of it was to reach maximum possible harmonisation quality of the PDP Act with the Directive 95/46/EC.

In the end of the year 2005 the EC - Data Protection Unit provided the Office with the comments which were discussed thoroughly in February 2006 in Bratislava with an EC expert. The discussion was very fruitful, aiming to find appropriate solutions for an effective contribution to the personal data protection in Slovakia. Recommendations and new ideas of EC will serve as a base during the next round of the PDP Act amendment process in a nearest possible time.

Implementation of Directive 2002/58/EC

The Directive 2002/58/EC sets out the rights and obligations within the scope of the data protection specifically for the electronic communications area. They were implemented into the Act No. 610/2003 Coll. on Electronic Communications within the scope of the New Regulatory Package for Electronic Communications. Implementation of this directive falls within the competences of Ministry of Transport, Posts and Telecommunications of the Slovak Republic.

In the beginning of the year 2005 European Commission sent an official notification on incomplete transposition of the Directive 2002/58/EC. Notification has concerned missing provisions on “cookies” and incomplete provisions on unsolicited communication. Slovak Republic has answered in a given time period and has proposed a solution. The process of amending the Act No. 610/2003 Coll. on Electronic Communications started by the Resolution No 663 of the Government of the Slovak Republic dated on September 7th 2005 and finished by adoption of the Act No 117/2006 Coll. by the Parliament of the Slovak Republic on February 2nd 2006. Missing provisions mentioned by EC were inserted into this act. This amendment of the Act No. 610/2003 Coll. became effective on April 1st, 2006.

Annotation of Other Legislative Acts and Opinions

The Office for Personal Data Protection of the Slovak Republic in the year 2005 annotated more that 100 legislative acts from the personal data protection point of view and worked out more than 690 statements.

2. Major case law

By issuing of a binding decision the fundamental right to use a wardship or any of the judicial remedies is not excluded. The Office was a trial party in 3 cases during the year 2005. One of them was on the amount of the penalty given , one intended to reverse an office decision and one was a judicial review of the executed

office procedures. The two cases were decided not in favour of the Office, however they are taken to the higher instance and one is still pending at the respective court.

3. Major Issues

Privacy and Transparency

Act of the Slovak National Council No 211/2000 Coll. on Free Access to Information was amended by the Act No 628/2005 Coll. The amendment became effective on January 2nd, 2006 and was extensively promoted in media. The latest version of the Act stipulates an obligation to more transparency in the public sector regarding the economic or financial identity of its officials and employees (e.g. managers of the state or municipal authorities, deputies etc.). It sets up to make available their personal data together with the information about their salaries and remunerations. Also it sets up to publish the personal data related to the ownership to real estate transferred from the state to other subjects. It also applies for publication of the information about the management of property owned by state or municipalities e.g. of its sale or rent. In that context more personal data have to be made available or published as before. The aim of the amendment is allegedly to make public sector for the Slovak citizens more transparent. However, we feel that the respective amendment is far beyond the framework of the standard personal data protecting rules set up by the Directives and did not solve the not transparent shareout of the budgetary sources at all. These concerns resulted in written opinions and public statements of the office representatives.

Fraudulent Misuse of the Personal Data and Biometrics

The Office had registered cases of personal data misuse by „ second pillar pension administration companies dealers“ that were widely published by TV and press. Second pillar pension administration companies are defined by the Act No 43/2004 Coll. The dealers elaborated contracts on behalf of the data subjects without their explicit consent (dealers are usually paid for creation of new contract). The second pillar pension administration companies said that the contracts were valid, the data subject affirmed the contrary. The due social insurance fee paid for pension funds is divided to equal parts for first pillar pension fund and the second pillar one. About 60 complaints of the victims were submitted to the Office.

The Office often consults the necessity to use some of the biometric data of data subjects for authentication/verification purposes in banking or other private sector. We received notifications about many cases of misuse of personal data as about fraud, faked contracts, money stolen from credit/debit cards, etc. The use of biometric data is increasingly getting on its importance in order to prevent loss or damage of customers or business partners. The relevant explicit consent of data subjects to process biometric data is required by the PDP Act only if the biometric data fall under the scope of the definition of the personal data. There is no special law in the Slovak Republic at present which would set up specific rules on collecting, processing, using or making the biometric data available.

Former State Security Records Disclosure

At present some people still require to disclose more of the secret records of the activities of the repressive state organs of former Slovakian and Czechoslovakian State from the period of the existence of these regimes in the years 1939-1989. The National Memory Institute of the Slovak Republic has made recently public the information about liquidation of Jewish enterprises (1941-1942). This information consists of 10112 records including the names of so called “Aryanizers” who received a percentage of the value of by them liquidated property. The so called Aryanization of the Jewish enterprises in the Second World War time (1939 – 1945).was a product of the by the Nazis imposed process of the "elimination of the Jews from the economic and social life"

International Co-operation

Except the regular international activities in the field of personal data and privacy protection due the EU membership, the Office participates in the multilateral CEE countries conferences that are focused on topics typical for the host countries. During the 7th Meeting of the Central and Eastern Europe Personal Data Protection Commissioners in Smolenice in Slovakia in May 24th 2005 , Declaration on future cooperation among Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and the Slovak Republic was signed. Concerning bilateral co-operation between Slovak Republic and Czech Republic on March 21st 2006 was in Valtice in the South Moravian region signed so called Valtice Memorandum on Co-operation between the Office for Personal Data Protection of the Slovak Republic and the Office for Personal Data Protection of the Czech Republic.

Moreover, the office representatives are participating in the events with the similar or related scope, for example conferences on Human Rights, Information Society, International Strategies and Investments, Telecommunications, Spam and Cybercrime etc. making efforts to create or tighten ties to the private investors and the third sector.

Schengen Evaluation Mission

The Schengen Evaluation Mission visited the Slovak Republic on February 2006 aiming to check the readiness of the Slovak Republic to implement Schengen Aquis in domain of personal data protection. In Slovakia the experts of the Mission focussed their monitoring to the following topics: legal, institutional and organisational framework of personal data protection, process of enforcing of the rights of data subjects and the ways how these claims are disposed of, supervisory activities of the Office, actual status of technical security of personal data processing, personal data protection related to process of application for/obtaining of visa, international co-operation of the Office with foreign data protection authorities, awareness of citizens in domain of personal data protection.

Experts of the Mission summarised their findings in the evaluation report. The Office in co-operation with the Ministry of Interior of the Slovak Republic worked out an official position on the evaluation report findings. Subsequently the requirements defined in the evaluation report were incorporated into time tables of the national Schengen action plan. We suppose that the homeworks coming out of this report will be addressed until the end of the year 2006 and the Slovak Republic will fulfil requirements given by EC.

Public Awareness

In order to increase the implementation quality of the Directive 95/46/EC that was incorporated into new amendment of the PDP Act, the Office informed ministers and other representatives of state administration authorities about the new provisions of the PDP Act, in particular about the interim provisions stated in Section 52 and about the respective deadlines following out from the interim provisions by section 55 of the PDP Act effective as of 1 May 2005. The majority of state administration bodies afterwards answered that they already implemented changes into the legislative rules in their competence or stated that the acts belonging to their competence already guarantee such a obligation. Some bodies declared their openness to implement new provisions on the base of a direct consultation with our Office.

In 2005 and 2006, there had been organized numerous seminars and consultations about the recently amended PDP Act and the amended data processing rules and the new obligations of controllers namely for banking and leasing sector, water supply companies, Cadastre Office, telecommunications and mobile operators, etc.

The Office created a new, version of its www pages. Furthermore, the employees of the Office provided independently many expert lectures on personal data protection.

In order to receive a quantified information about the public awareness the subsequent public opinion poll was performed. Awareness of citizens on personal data protection rights raised more than of 25 % contrary to the 1999. The poll showed us the from the citizen's point of view most sensitive personal data: National ID (so called Birth ID) was considered to be the most sensitive by 72% of citizens, data on personal property and finances by 40%, health state data by 40%, biometric data by 22%, mental identity (psychical state) by 21%, rap sheet data by 13%, membership in political party – political opinions by 12%, information on sexual orientation by 12%, faith / church confession by 10%, race, ethnic data by 5%, nationality by 5%.

Notifications of the Personal Data Protection Officials Appointed by the Controllers / Registrations of the Filing Systems

Consequently to the latest amendment of the PDP Act in the year 2005 and 2006 until the April 12th the Office registered 37 500 notifications of appointment of the personal data protection officials responsible for internal supervision of personal data protection as provided by the Section 19 of the PDP Act. These notifications replaced the registration of filing systems in vast majority of cases.

In the year 2005 the Office has issued 31 standard registration numbers based on the provisions of the Section 26 and 25 special registration numbers in accordance with the Section 27 of the PDP Act. In the year 2006, until the April 12th the Office has processed 6 standard and 7 special registrations of filing systems. The

Office has received until the April 12th 2006 totally 4 639 applications to registration of the filing systems processing personal data.

The Office has given until April 12th 2006 in 28 cases its consent to transborder transfer of personal data to third countries provided by the Section 23 (7) of the PDP Act .

Complaints

In 2005 the Office processed 187 complaints . 134 of them alleged the breach PDP Act. The other 53 were initiated on basis of findings and decisions of the Chief Inspector. Another 16 complaints were pending from the year 2004 and were completed in the year 2005.

From the 150 complaints received in 2005 the Office has evaluated 43 as the substantiated ones, 20 partially substantiated and 87 as non-substantiated ones. The 37 of them were related to public sector and 112 of them to private sector.

In the year 2006 until the April 12th the Office has received 38 complaints.

The complaints had the following content: personal data misuse by „ Second pillar pension administration companies dealers“. investigated by the Office in co-operation with the Office for Supervision of Financial Market and the Police ; illegitimate making of personal data available/public; extent and purpose of the personal data processing ; illegitimate video surveillance ; illegitimate personal data disclosure to third parties; illegitimate personal data provision to third parties .

Audits

The Department of Chief Inspector executed 63 audits of the filing systems processing personal data.

Concerning the video surveillance of public areas the Office executed 28 preventive audits at municipal police departments, hospitals, petrol stations, hypermarkets and other places. For all inadequacies found the proper measures were taken which had to be appropriately implemented. For the cases where no violations of law were found the respective data controllers had received from the inspectors practical recommendations for their future actions.

Priorities

Health Records

The Office's main priority for the year 2006 is to conduct a profound investigation on the medical data processing. The Personal Data Protection Act of the Slovak Republic is applicable to the processing of the personal data in the health care sector as the general law regulation. The Act on the Provision of Health Care as the special law regulation provides detailed specifications of the general regulations.

Final Remark

Personal Data and Privacy Protection is a complex multidisciplinary activity. It is not possible to mention all activities and current hot issues exhaustingly on few pages of the text. The rapid development of new emerging technologies and electronic services processing the personal data is keeping on and the adequate legal protection is always falling few steps behind. All these new technologies, applications and systems have to be uncompromisingly protected from the data protection perspective.

We especially welcome international co-operation within A29 WP which could contribute to reach the highest possible quality of personal data protection in our country.