

FRA

Thematic Legal Study on assessment of
data protection measures and relevant
institutions
[Bulgaria]

[Sofia][Bulgaria]
February 2009

DISCLAIMER: This thematic legal study was commissioned as background material for the comparative report on *Data protection in the European Union: the role of National Data Protection Authorities* by the European Union Agency for Fundamental Rights (FRA). It was prepared under contract by the FRA's research network FRALEX. The views expressed in this thematic legal study do not necessarily reflect the views or the official position of the FRA. This study is made publicly available for information purposes only and do not constitute legal advice or legal opinion.

Contents

| | |
|--|-------------------------------------|
| Executive summary | 3 |
| Overview | 16 |
| 1.1. Public Debate | 17 |
| 2. Data Protection Authority | 20 |
| 2.1. Resources..... | 24 |
| 3. Compliance..... | 36 |
| 3.1. Practice on Registration of PDC..... | 39 |
| 4. Sanctions, Compensation and Legal Consequences | 41 |
| 5. Rights Awareness..... | 45 |
| 6. Analysis of deficiencies | 46 |
| 6.1. Legislative deficiencies | 47 |
| 7. Good practices | 48 |
| 8. Miscellaneous | Error! Bookmark not defined. |
| Annexes | 49 |

Executive summary

Overview

- [1]. Bulgaria ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms on 31.07.1992 and the Convention for the Protection of Individuals with Regards to Automatic Processing of Personal Data on 07.06.2002. By virtue of Art. 5, para. 4 of the Constitution of the Republic of Bulgaria all international treaties ratified by Bulgaria have direct applicability and supersede any domestic law contradicting their provisions. The Constitution of the Republic of Bulgaria itself and the *Закон за защита на личните данни* [Personal Data Protection Act (PDPA)]¹ regulate the protection of personal data. The Bulgarian Constitution² stipulates that the privacy of citizens is inviolable and entitles everyone to protection against any illegal interference with his/her private or family affairs and against violations on his honour, dignity and reputation. The Constitution also states that none shall be followed, photographed, filmed, recorded or subjected to any other similar activity without his knowledge or despite his express disapproval, except when such actions are permitted by law.³ The adoption of a Personal Data Protection Act adopts the principles and rules of Council Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The Personal Data Protection Act (01.01.2002) regulates the protection of natural persons regarding their personal data processing, as well as, the access to such data.⁴ Its purpose is to guarantee the inviolability of individuals and their privacy through protecting natural persons against illegitimate processing of personal data related to them and through providing right to access to such data, which has been collected or processed.⁵

¹ Bulgaria/*Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), available in English at: http://www.cdpd.bg/en_zakon.html (last accessed on 10.01.2009)

² Bulgaria/*Конституция на Република България* [Constitution of the Republic of Bulgaria], (31.07.1991), Art. 32, par. 1.

³ Bulgaria/*Конституция на Република България* [Constitution of the Republic of Bulgaria], (31.07.1991), Art. 32, par. 2.

⁴ Bulgaria/*Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art. 1, par. 1.

⁵ Bulgaria/*Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art.1, par. 2.

- [2]. The PDPA envisages the establishment of one collegial, independent, state body to supervise and control the implementation of the Act – the *Комисия за защита на личните данни (КЗЛД)* [Commission for Personal Data Protection (CPDP)]. According to PDPA within one month after the coming into force of the Act, the Council of Ministers proposes to the National Assembly the members of the Commission, and within 14 days after the proposal has been entered, the National Assembly elects the staff of the Commission. The National Assembly on the basis of a proposal made by Council of Ministers on 23.05.2002 (with a three months delay) elected the chairperson and the four members of the CPDP.⁶ The *Правилник за дейността на Комисията за защита на личните данни* [Regulations for the Activities of the Commission for Personal Data Protection] was adopted on 23.07.2002. New Regulations were adopted later on 31.01.2003. On 23.03.2007, the CPDP adopted a *Наредба 1 от 7 февруари 2007 за минималното ниво на технически и организационни мерки и допустимия вид защита на личните данни* [Ordinance 1 dated on 7 February 2007 for the minimal requirements about technical and organisational measures and acceptable type of personal data protection].
- [3]. The PDPA is not applicable to processing of personal data by a natural person connected with personal or domestic activities and to information kept by the National Archive Fund.⁷ The PDPA is applicable to processing and access to personal data for the purposes of defence, national security, and public order, as well as, for criminal proceedings unless other special legislation regulates this.⁸ The order and the conditions for processing of personal identification number or other identifying numbers with general application are to be regulated in special acts.⁹
- [4]. As far as the adoption of the Personal Data Protection Act in 2002, *Фондация Програма 'Достъп до информация'* [Access to Information Programme Foundation (AIP)] expressed its concerns about the weakness in the Act and the possible problems that might arise in the future. AIP experts took part in the working group for the amendments to the PDPA in 2005, when they emphasised the main

⁶ Bulgaria/*Комисия за защита на личните данни/Годишен отчет за 2002-2003* [Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003], p.4, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

⁷ Bulgaria/*Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art.1, para.7 (13.07.2007).

⁸ Bulgaria/*Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art.1, para.5 (10.11.2006).

⁹ Bulgaria/*Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art. 1, para.6 (10.11.2006).

shortcomings of the PDPA again: the status of the CPDP members, the grave conditions for the registration of personal data controllers, the unclear status of the personal data in the public registers. The amendments in 2005 reduced the scope of the PDPA only to those data that is kept in registers by controllers; excluded membership in state or control bodies from the list of personal data; described in detail the principles of keeping and accessing personal data and abolished the obligations of all controllers to register, but obliged only those who process sensitive data, who keep personal data registers because of legal obligations, who keep registers of more than 100 people and who keep personal data because the CPDP prescribed so.

¹⁰

- [5]. Another Bulgarian NGO-*Център за модернизирание на политики* [Centers for Policy Modernisation] analysed in more detail the amendments in the Protection of Personal Data Act, adopted in 2005.¹¹ The aim of the Act was extended to include also the transfer of personal data between Bulgaria and other countries and regulated how foreign controllers can process and keep personal data when in Bulgaria. Personal identification number was excluded from the scope of the Act and it was provided that it should be regulated by other special legislation. A general prohibition for processing of sensitive personal data was introduced and special cases, when its processing is allowed, were regulated in a way that complies with Council Directive 95/46. The definitions of controller, receiver, personal data register, consent of a natural person, third country and direct marketing were also specified. The principles for processing and keeping personal data and the main cases in which the processing of personal data is allowed were introduced. An important element is also that personal data processing in public interest was introduced and regulated. A special exclusion was provided for when the processing of personal data is done only for journalistic, artistic or literary purposes. Drafting an Ethic Code 'to reflect on specific problems' for different controllers was another obligation of the CPDP under the PDPA.
- [6]. The right to complain against personal data controllers (PDC) was amended to be general and not to describe each and every ground on which a natural person can complain before the CPDP or the court. The term within which the right to complain can be exercised was extended from 14 to 30 days after the person was notified about the

¹⁰ Bulgaria/ Програма Достъп до информация [Access to Information Program] – *Annual report on the situation with access to information in Bulgaria 2005*, p.21, available in Bulgarian at: http://www.aip-bg.org/pdf/report_2005.pdf, (last accessed on 10.01.2009).

¹¹ *Център за модернизирание на политики* [Centers for Policy Modernisation], Analysis of the Amendments in Protection of Personal Data Act in 2005, available in Bulgarian at: <http://privacy.gateway.bg/htmls/page.php?category=91&id=195>, (last accessed on 10.01.2009).

violation. The sanctions for those who violate the PDPA were increased from 50 to 1,000 BGN (25 to 500 Euro) to 50 to 30,000 BGN (25 to 15,000 Euro). The transfer of personal data to third persons and to other countries is also improved as legal regulation. The grounds on which the transfer can be allowed are more and expand to include every controller that has legal duties to process personal data. Transfer of personal data to third persons is allowed when it is in the public interest and when it is done only for journalistic, artistic or literary purposes. The obligation of the PDC to ask for permission for the transfer from the CPDP was abolished, which reduced the unnecessary complicated work of the CPDP.

- [7]. The insufficient protection of personal data in Bulgaria was criticised in the European Commission monitoring reports in the pre-accession process.¹² The research did not find much information about any public debate about personal data protection or the functioning of the Commission for Personal Data Protection. The majority of the press publications during the period 2002-2007 were discussing the lack of administrative capacity of the CPDP, lack of evidence about the efficiency of its activities and the findings about the misuse of state budget.¹³

Data Protection Authority

- [8]. The Bulgarian *Комисия за защита на личните данни* (КЗЛД) [Commission for Personal Data Protection (CPDP)] is an independent supervisory authority which protects individuals in the processing of their personal data, the provision of access to such data, and controls the implementation of the Personal Data Protection Act by personal data controllers.¹⁴ The CPDP is based in Sofia and is a first-rate subsidised body by the state budget.¹⁵ It is a collegiate body, consisting of a Chairperson and four members, elected by the Parliament for a period of five years with a possibility to be re-elected

¹² Part of the 2005 European Commission's report on Bulgaria concerning personal data protection: <http://privacy.gateway.bg/htmls/page.php?category=105&id=171>.

¹³ *New scandal rocks Bulgaria's Commission for Personal Data Protection*, dated on 27 08 2007, available at: http://frognews.bg/Frog/index.php?option=com_content&task=view&id=2336&Itemid=86&bsb_midx=-1.

¹⁴ Bulgaria/*Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art. 6, para.1.

¹⁵ Bulgaria/*Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art. 6, para.2.

for 5 years more.¹⁶ Members of the Commission may only be Bulgarian citizens who have: a university degree in law or in information sciences or a master's degree in information technologies; length of service of at least 10 years in their respective field; clean criminal record.¹⁷ The Chairperson should be a trained lawyer who meets the above mentioned requirements.¹⁸

- [9]. According to the PDPA within one month after the enforcement of the Act, the Council of Ministers enters a proposal in the National Assembly about the members of the Commission. Within 14 days, after the proposal has been entered, the National Assembly elects the staff of the Commission. The proposal of the Council of Ministers was entered on 9.05.2002 (and was due until 01.02 2002). On 23.05.2002 the National Assembly elected the members of the Commission. The Commission adopted and published its Regulations on 23.07.2002. In compliance with the Regulations the total number of the staff is 76 full-time positions (including 5 elective positions). The staff of the CPDP (76 persons) should consist of: five elective positions; a financial inspector; a general secretary, 25 persons general administration and 44 persons - in specialised administration of whom 14 work in the Law and International Affairs Department, 15 work in Inspection Activity Department and 15 - in Information Department.¹⁹ According to the new Regulations, adopted in February 2009, the administration of the PDPC should be 81 persons in total, of whom a financial inspector, an internal auditor, an information security official, 26 persons are general administration and 48 specialised administration – 12 in Legal and International affairs Department, 18 – in Control and Legal Issues Department and 18 in the Information Systems Department.²⁰
- [10]. The sessions of the Commission are public, in certain cases it may decide to have closed hearings.²¹ The Commission takes decisions by

¹⁶ Bulgaria/Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 7.

¹⁷ Bulgaria/Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 8.

¹⁸ Bulgaria/Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 8, para. 3.

¹⁹ Bulgaria/Правилник за дейността на Комисията за защита на личните данни и нейната администрация [Regulations for the Activity of the Commission for Personal Data Protection and Its Administration] (23.03.2007), par. 3, Concluding Provisions.

²⁰ Bulgaria/Правилник за дейността на Комисията за защита на личните данни и нейната администрация [Regulations for the Activity of the Commission for Personal Data Protection and Its Administration] (10.02.2009).

²¹ Bulgaria/Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 9, para.4.

the majority vote of all its members.²² The decisions of the Commission on complaints may be appealed before the Supreme Administrative Court.²³ The Commission issues a bulletin, in which publishes information about its activities and the decisions taken.²⁴ By 31 January every year, the Commission is obliged to submit an annual report to the National Assembly and the Council of Ministers.²⁵

- [11]. The Commission has the following powers: 1. analyses and exercises overall control on the compliance with the legislation in the field of personal data protection; 2. keeps a register of Personal Data Controllers; 3. inspects the controllers' activities; 4. gives opinions and permissions in envisaged in legislation cases; 5. issues obligatory instructions to the controllers related to the protection of personal data; 6. upon advance notification imposes temporary suspension on personal data processing that violates the personal data protection rules; 7. reviews complaints against controllers that violate the rights of natural persons to access to their personal data as well as other controllers' or third parties' complaints in relation with their rights under the PDPA; 8. participates in the drafting of legislation containing provisions on personal data protection; 9. ensures implementation of European Commission's decisions in the protection of personal data field.²⁶
- [12]. The Commission has competence to supervise both public and private sectors. It is a central administrative authority in the area of personal data protection. The Chairperson and the members of the Commission, or persons authorised by its administration inspect the implementation of the PDPA by prior, current or follow-up checks.²⁷ Prior checks are obligatory when the controller declared that it would process sensitive data – regarding racial, ethnic origin, regarding political, religious, philosophical beliefs, membership in political parties or organisations, associations with religious, philosophical, political or trade union aims, regarding person's health, sexual life or human genome²⁸ or data the processing of which would violate

²² Bulgaria/Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 9, para.2.

²³ Bulgaria/Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 38, para.6.

²⁴ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 7, para.3.

²⁵ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 7, para.6.

²⁶ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 10.

²⁷ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 12 (10.11.2006).

²⁸ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 5 (23.12.2005).

person's rights and interests according to the Commission's decision.²⁹ Current (regular) investigations are performed upon request of interested persons and upon the Commission's initiative, provided a monthly plan for control activities is adopted.³⁰ Follow-up investigations are performed for implementation of a decision or obligatory instruction issued by the Commission, as well as after it initiates such upon a complaint.³¹ Personal data controllers are obliged not to impede the control over the processing of personal data and to provide the investigating persons with requested information. Any type of professional duty to keep secret cannot be a legal ground to refuse co-operation to the CPDP. All persons who process personal data are obliged to cooperate with the Commission when it exercises its duties.³²

- [13]. Every natural person whose rights under the PDPA have been allegedly violated has the right to complain before the CPDP within one year after he/she was notified about the violation and not later than five years after the violation took place.³³ The Commission should decide within 30 days. It may decide to give obligatory instructions to the controllers, to determine a deadline for demolishing of the violation, or to apply administrative sanction.³⁴ The Commission is obliged to send a copy of its decision to the complainant.³⁵
- [14]. Since its establishment in September 2002 the CPDP has not had its own working space and had not managed to recruit the envisaged in PDPA staff of 76 people yet in 2008.

²⁹ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 12, para.2 in connection with Art.17b (10.11.2006).

³⁰ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 12, para.3 (10.11.2006).

³¹ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 12, para.4 (10.11.2006).

³² Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 22 (23.12.2005).

³³ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 38 (10.11.2006).

³⁴ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 38, para.2 (23.12.2005).

³⁵ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 38, para.4.

Compliance

- [15]. The first Protection of Personal Data Act (adopted in January 2002) defined personal data as any information for an individual, revealing his/her physical, psychological, mental, family, financial, cultural, or public identity³⁶ and personal data of individuals related to their participation in civil associations, or in the managing, controlling and supervising bodies of legal persons, as well as holding a state position.³⁷ The amendments in 2005 and 2006 provided that ‘personal data’ would be any information regarding a natural person who is identified or might be identified in a direct or indirect way by identification number or by one or several specific indicators.³⁸ Under the amended PDPA, the principles relating to data quality and the criteria for making data processing legitimate provided in Art. 6 and 7 of the Council Directive 95/46 were transposed.³⁹ According to Art. 3 of this PDPA ‘personal data controller is a public authority or natural or legal person authorised to specify the type of the data processed, the purpose of processing, and the means of processing and of protection in compliance with the provisions of PDPA’ The amendments in this article introduced on 10.11.2006 provided that the controller can only specify the purposes and the means of processing and if it is a public authority body the type, means and purposes are determined in legislation. The personal data controller must process the personal data on his own or entrust them to another personal data processor. Institutions must process personal data only in cases

³⁶ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 2, para.1.

³⁷ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 2, para.2 .

³⁸ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 2, para.1 (23.12.2005, 10.11.2006).

³⁹ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 2, para.2 (23.12.2005). Data processing must be done: in a lawful way, processing should be directed to concrete, specified and legitimate purposes and the personal data should not be further processed in a way incompatible with these purposes, additional processing for historic, statistical or scientific purposes is acceptable if the controllers ensure appropriate protection by guaranteeing that the data is not processed for other purposes, personal data should be compatible with the aims and to not exceed the aims for which they are processed, personal data should be accurate and updated if necessary, personal data should be erased or corrected when it is established that they are incorrect or inproportionate to the purposes for which they are processed, personal data should be maintained in a way allowing identification of the natural persons for a period not longer than the necessary for the purposes, personal data to be kept for historic, statistical or scientific purposes are kept in a way not allowing identification of the natural persons.

provided by law.⁴⁰ Personal data are kept in personal data registers. Personal data processed by institutions are data for official use only.⁴¹

- [16]. Processing of personal data is allowed when at least one of the following requirements is fulfilled: processing is necessary for compliance with legal obligations of the controller, the data subject expressed consent, the processing is necessary in relation to a contract in which the data subject is one of the parties, the processing is necessary to protect the life or health of data subject, when it done as an implementation of a given task that is in public interest, when it is an implementation of a legal obligation of a public authority, when the processing is necessary as an implementation of the legal interests of the controller or a third person to which personal data is disclosed unless the interests of the natural persons are predominant to the above mentioned.
- [17]. Processing is acceptable for the purposes of journalism, literature or arts if it does not violate the right to personal life.⁴²
- [18]. Processing of personal data which disclose the racial or ethnic origin, political, religious, philosophical beliefs, membership in political parties, organisations, associations with religious, philosophical or political or trade union purposes, which relate to health, sexual life or the human genome is prohibited by Art. 5 of PDPA. Few exceptions of that prohibition are also regulated.⁴³ An act of a state or local government body, which may have legal consequences for a given person, and which contains an evaluation of his/her behaviour, should not be based on the automatic processing of personal data only.⁴⁴

⁴⁰ Bulgaria/ *Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art. 3, para.3.

⁴¹ Bulgaria/ *Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art. 4, para.1.

⁴² Bulgaria/ *Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art. 4, para.2

⁴³ Bulgaria/ *Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art. 5, para.2 (23.12.2005). Processing of sensitive data would not be prohibited if: personal data controller is doing that as an implementation of legal obligations under the employment legislation, if the data subject gave his/her consent, if the processing is necessary for protection of life or health of the data subject or other person and the condition in which the person is does not allow him/her to express consent or there are legal obstacles for that, an NGO is processing such data while performing its lawful activities and with certain protection if the processing is related only to the members or persons with which it contains permanent relationship for its purposes, the data cannot be disclosed to third persons without the consent of the person to whom they relate; processing is related to publicly announced data by the data subject or it is necessary for estimation, exercising or protection of rights in judicial order, processing is necessary for the purpose of preventive medicine, medical diagnostics, provision or management of healthcare services, if the data is processed by medical specialist, obliged by law to keep professional secret, or other person obliged by law to keep professional secret, processing is done only for journalistic, artistic, literary purposes and does not violate the right to personal life.

⁴⁴ Bulgaria/ *Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art. 5.

- [19]. In December 2005 the PDPA was amended in the chapter which regulated the controllers of personal data. The latter are obliged to apply before the CPDP prior the start of personal data processing.⁴⁵ Within 14 days after the application the CPDP registers the controller. Registration is not required when the controller maintains a register which by law is supposed to ensure public information and the access to it is free. People with legal interest can access it or process data which disclose membership in political parties, organisations, associations with religious, philosophical or political or trade union purposes. The Commission can eliminate the obligation for registration in certain cases.⁴⁶
- [20]. The controllers are obligated to take all necessary technical and organisational measures to protect the data from accidental or illegal destruction, or accidental loss, or inappropriate access, alteration, distribution and other forms of illegal processing.⁴⁷ When the data is transferred in an electronic way the controller is obliged to take special measures. The measures should ensure a level of the protection compatible with the risks of the processing and the type of data to be protected. Each controller adopts the measures with Guidelines/Instruction. CPDP determines the minimal level of these measures in an ordinance. According to this ordinance the controllers may appoint one or more persons to protect personal data.⁴⁸ This person is a natural or legal person with the necessary competency and expertise, which is appointed or empowered by the controller by a written document in which all rights and obligations in connection with ensuring the minimal necessary technical and organisational measures for protection of personal data while being processed are enlisted.⁴⁹ No requirements about these persons are mentioned in the legislation. Persons to raise awareness for personal data protection are not regulated in legislation either.
- [21]. The practice of the registration of personal data controllers shows that the CPDP was not ready to develop and prepare its administrative capacity to implement its duties. The CPDP published the registration form in February 2003. Until the end of August 2003, 10,000 personal

⁴⁵ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 17 (23.12.2005, 10.11.2006).

⁴⁶ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 17, para.2.

⁴⁷ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 23.

⁴⁸ Bulgaria/Наредба 1 от 7 февруари 2007 г. за минималното ниво на технически или организационни мерки и допустимия вид защита на личните данни (23.03.2007), Art. 3, para.1.

⁴⁹ Bulgaria/Наредба 1 от 7 февруари 2007 г. за минималното ниво на технически или организационни мерки и допустимия вид защита на личните данни (23.03.2007), Art. 1, item 1 of the Additional Provisions.

data controllers applied and the CPDP decided that most of the controllers did not know about their duty to register so it extended the deadline for registration up to 1 December 2003. Four people at the CPDP were expected to work on these applications which until the end of December 2003 were 227, 251 and out of them only 8,247 had been registered.⁵⁰ Access to personal data registers was supposed to be done with the permission of the CPDP by law and the same was relevant for transfer of personal data between controllers. This provision was revoked in 2005. But until December 2003, 59 applications for access to personal data registers were filed and 38 of them were approved.⁵¹ During 2005 the controllers that wanted to register themselves were 270,015; 17, 691 were registered and 389 received a refusal.⁵² 224 persons of those that wanted access to their personal data to be permitted were allowed to get access, 14 were not and 66 applications were pending. In 2006, the CPDP was asked to register 4,431 administrators and registered 14, 279 of those who applied the previous years. Thus in 2006 out of 274,446 that applied, 31,970 were registered.⁵³ In 2007 the CPDP received 6,311 applications for registration and registered 16,955 administrators from previous years.⁵⁴

Sanctions, Compensation and Legal Consequences

- [22]. The case-law, published in the bulletins, issued by CPDP regarding complaint procedure shows that natural persons complain of illegal processing of their personal data mainly against banks, the Ministry of Interior, real estate agencies, prosecutors, courts and municipalities. The most usual sanction is instruction for elaboration of internal rules

⁵⁰ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, pp. 11-12, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

⁵¹ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, p.13, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

⁵² Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, p.19, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

⁵³ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, p.17, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

⁵⁴ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2007, p.19, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

for personal data protection and providing feedback to the CPDP on what they elaborated. When the personal data is still available in registers, database or a website of the administrator after the aim is achieved, the CPDP gives instructions for the data to be deleted and a report about that to be sent back to it. However, there is no evidence in the CPDP annual reports and bulletins that CPDP either received feedback or checked whether that had happened. This is why it is impossible to understand how effective these sanctions were. The case law of the CPDP does not contain any evidence of discussion about the importance of proof of intent. In the Annual reports and case-law published in the quarterly bulletins, the CPDP does not mention anything about the legal consequences after it issues a decision finding a violation of the personal data protection legislation.

Rights Awareness

- [23]. This research did not find any studies on the population's awareness regarding data protection law and rights. The only information regarding a rights awareness raising campaign about personal data protection rights was provided by *Access to Information Program* (NGO) that carried it out in 2003.⁵⁵ The project was funded by European Initiative for Democracy and Human Rights. Under this project, 10,000 brochures and posters were printed and distributed and three trainings for 210 persons - personal data controllers on how to implement Protection of Personal Data Act were organised.

Analysis of deficiencies

- [24]. The main deficiencies regarding effective data protection and effective bodies are: lack of full compliance with international standards while the national data protection legislation was drafted and adopted, which led to several amendments that confused those who were expected to implement it, lack of rights awareness after this legislation was adopted, lack of administrative capacity of the data protection body, lack of proper and consistent implementation of this legislation and lack of transparency and unified and clear case-law of the data protection body.

⁵⁵ http://www.aip-bg.org/library/projects/zzld_bg.htm, (last accessed on 10.01.2009).

- [25]. Main deficiencies would be reduced if the legislation is reviewed and amended to be in full compliance with international standards. For this purpose, experts in the field should be involved in the working group that would draft it. So far none of the members of the CPDP was involved in such a process. In addition, sufficient resources should be allocated to allow the CPDP to have its own permanent premises, the full number of qualified and permanent staff, the possibility to hire specialists for certain tasks, available funding for rights awareness and provision of advice to personal data administrators. It is needed that the case-law and control activities of the CPDP be thoroughly researched by its own members and administration to keep it consistent and use it as a resource for further optimisation of the practice on personal data protection. It is also needed that CPDP drafts general rules or frequently asked questions section on its website (and probably also issue a brochure) to facilitate citizens and administrators to implement properly the data protection legislation. The CPDP needs also to impose financial sanctions itself and to review at regular periods of time (every 3 or 6 months) whether its obligatory instructions to controllers are abided by and to include all this information in its annual reports and bulletins.

Good Practice

- [26]. This research did not find any examples of good practice in personal data protection field in Bulgaria.

Overview

- [27]. Bulgaria ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms on 31.07.1992 and the Convention for the Protection of Individuals with Regards to Automatic Processing of Personal Data on 07.06.2002. By virtue of Art. 5, para. 4 of the Constitution of the Republic of Bulgaria all international treaties ratified by Bulgaria have direct applicability and supersede any domestic law contradicting their provisions. The Constitution of the Republic of Bulgaria itself and the *Закон за защита на личните данни* [Personal Data Protection Act (PDPA)]⁵⁶ regulate the protection of personal data. The Bulgarian Constitution⁵⁷ stipulates that the privacy of citizens is inviolable and entitles everyone to protection against any illegal interference with his/her private or family affairs and against violations on his honour, dignity and reputation. The Constitution also states that none shall be followed, photographed, filmed, recorded or subjected to any other similar activity without his knowledge or despite his express disapproval, except when such actions are permitted by law.⁵⁸ The adoption of a Personal Data Protection Act adopts the principles and rules of Council Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The Personal Data Protection Act (01.01.2002) regulates the protection of natural persons regarding their personal data processing, as well as, the access to such data.⁵⁹ Its purpose is to guarantee the inviolability of individuals and their privacy through protecting natural persons against illegitimate processing of personal data related to them and through providing right to access to such data, which has been collected or processed.⁶⁰
- [28]. The PDPA envisages the establishment of one collegial, independent, state body to supervise and control the implementation of the Act – the *Комисия за защита на личните данни* (КЗЛД) [Commission for Personal Data Protection (CPDP)]. According to PDPA within one

⁵⁶ Bulgaria/*Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), available in English at: http://www.cpdp.bg/en_zakon.html (last accessed on 10.01.2009)

⁵⁷ Bulgaria/*Конституция на Република България* [Constitution of the Republic of Bulgaria], (31.07.1991), Art. 32, par. 1.

⁵⁸ Bulgaria/*Конституция на Република България* [Constitution of the Republic of Bulgaria], (31.07.1991), Art. 32, par. 2.

⁵⁹ Bulgaria/*Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art. 1, par. 1.

⁶⁰ Bulgaria/*Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art.1, par. 2.

month after the coming into force of the Act, the Council of Ministers proposes to the National Assembly the members of the Commission, and within 14 days after the proposal has been entered, the National Assembly elects the staff of the Commission. The chairperson and the four members of the CPDP were elected by the National Assembly on the basis of a proposal made by Council of Ministers on 23.05.2002 (with a three months delay).⁶¹ The *Правилник за дейността на Комисията за защита на личните данни* [Regulations for the Activities of the Commission for Personal Data Protection] was adopted on 23.07.2002. New Regulations were adopted later on 31.01.2003 and on 10.02.2009.⁶² On 23.03.2007, the CPDP adopted a *Наредба 1 от 7 февруари 2007 за минималното ниво на технически и организационни мерки и допустимия вид защита на личните данни* [Ordinance 1 dated on 7 February 2007 for the minimal requirements about technical and organisational measures and acceptable type of personal data protection].

- [29]. The PDPA is not applicable to processing of personal data by a natural person connected with personal or domestic activities and to information kept in the National Archive Fund.⁶³ The PDPA is applicable, regarding processing and access to personal data, for the purposes of defence, national security and public order, as well as, for the criminal proceedings unless other special legislation regulates this.⁶⁴ The order and the conditions for processing of personal identification number or other identifying numbers with general application are to be regulated in special acts.⁶⁵

1.1. Public Debate

- [30]. The research did not find much information about any public debate on personal data protection or the functioning of the Commission for

⁶¹ Bulgaria/Комисия за защита на личните данни/Годишен отчет за 2002-2003 [Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003], p.4, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

⁶² Bulgaria/ Правилник за дейността на Комисията за защита на личните данни и нейната администрация [Regulations for the Activity of the Commission for Personal Data Protection and Its Administration] (10.02.2009).

⁶³ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art.1, para.7 (13.07.2007)

⁶⁴ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art.1, para.5 (10.11.2006).

⁶⁵ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 1, para.6 (10.11.2006).

Personal Data Protection. The majority of the press publications during the period 2002-2007 discussed the lack of administrative capacity of the CPDP, lack of evidence about the efficiency of its activities and the findings about the misuse of state budget. Below is an example of such news: ⁶⁶

- [31]. *'A major scandal involving the CPDP will erupt soon. It emerged that its mandate expired back in May, but the old members are still getting salaries and driving their company cars, in this case BMWs. This happened because the government has not agreed about who should head the commission. The current members were elected by Parliament on May 23, 2006 with five-year mandates. Some time ago the Audit Office informed that the CPDP hadn't done anything in three years, but it paid huge office rent and bought BMWs with taxpayers' money. The CPDP made just 10-17 inspections a year, but employed one million personal data administrators. The body did not enforce a single penalty in its tenure, the Audit Office concluded. Boyko Velikov, chair of the parliamentary committee for combating corruption, declared that certain CPDP staff members must resign. He emphasised that the Audit Office's report clearly shows malfeasance occurred.*
- [32]. As far as the adoption of the Personal Data Protection Act in 2002, Фондация Програма 'Достъп до информация' [Access to Information Programme Foundation (AIP)] expressed its concerns about the weakness in the Act and the possible problems that might arise in the future. AIP experts took part in the working group for the amendments to the PDPA in 2005, when they emphasised the main shortcomings of the PDPA again: the status of the CPDP members, the grave conditions for the registration of personal data controllers, the unclear status of the personal data in the public registers. The amendments in 2005 reduced the scope of the PDPA only to those data that is kept in registers by controllers; excluded membership in state or control bodies from the list of personal data; described in detail the principles of keeping and accessing personal data and abolished the obligations of all controllers to register, but obliged only those who process sensitive data, who keep personal data registers because of legal obligations, who keep registers of more than 100 people and who keep personal data because the CPDP prescribed so. ⁶⁷Another Bulgarian NGO-Център за модернизирание на политики [Centers for Policy Modernisation] analysed in more detail the amendments in the Protection of Personal Data Act, adopted in

⁶⁶ *New scandal rocks Bulgaria's Commission for Personal Data Protection', dated on 27 08 2007, available at: http://frognews.bg/Frog/index.php?option=com_content&task=view&id=2336&Itemid=86&bsb_midx=-1.*

⁶⁷ Bulgaria/ Програма Достъп до информация [Access to Information Program] – *Annual report on the situation with access to information in Bulgaria 2005*, p.21, available in Bulgarian at: http://www.aip-bg.org/pdf/report_2005.pdf, (last accessed on 10.01.2009).

2005.⁶⁸ The aim of the Act was extended to include also the transfer of personal data between Bulgaria and other countries and regulated how foreign controllers can process and keep personal data when in Bulgaria. Personal identification number was excluded from the scope of the Act and it was provided that it should be regulated by other special legislation. A general prohibition for processing of sensitive personal data was introduced and special cases, when its processing is allowed, were regulated in a way that complies with Council Directive 95/46. The definitions of controller, receiver, personal data register, consent of a natural person, third country and direct marketing were also specified. The principles for processing and keeping personal data and the main cases in which the processing of personal data is allowed were introduced. An important element is also that personal data processing in public interest was introduced and regulated. A special exclusion was provided for when the processing of personal data is done only for journalistic, artistic or literary purposes. Drafting an Ethic Code 'to reflect on specific problems' for different controllers was another obligation of the CPDP under the PDPA. The right to complain against personal data controllers (PDC) was amended to be general and not to describe each and every ground on which a natural person can complain before the CPDP or the court. The term within which the right to complain can be exercised was extended from 14 to 30 days after the person was notified about the violation. The sanctions for those who violate the PDPA were increased from 50 to 1,000 BGN (25 to 500 Euro) to 50 to 30,000 BGN (25 to 15,000 Euro). The transfer of personal data to third persons and to other countries is also improved as legal regulation. The grounds on which the transfer can be allowed are more and expand to include every controller that has legal duties to process personal data. Transfer of personal data to third persons is allowed when it is in the public interest and when it is done only for journalistic, artistic or literary purposes. The obligation of the PDC to ask for permission for the transfer from the CPDP was abolished, which reduced the unnecessary complicated work of the CPDP. The insufficient protection of personal data in Bulgaria was criticised in the European Commission monitoring reports in the pre-accession process.⁶⁹

⁶⁸ *Център за модернизирание на политики* [Centers for Policy Modernisation], Analysis of the Amendments in Protection of Personal Data Act in 2005, available in Bulgarian at: <http://privacy.gateway.bg/htmls/page.php?category=91&id=195>, (last accessed on 10.01.2009).

⁶⁹ Part of the 2005 European Commission's report on Bulgaria concerning personal data protection: <http://privacy.gateway.bg/htmls/page.php?category=105&id=171>.

2. Data Protection Authority

[33]. The Bulgarian *Комисия за защита на личните данни* (КЗЛД) [Commission for Personal Data Protection (CPDP)] is an independent supervisory authority mandated to protect individuals in the processing of their personal data, to provide permission for access to such data and to exercise control for the implementation of the Personal Data Protection Act.⁷⁰ The CPDP is based in Sofia and is a first-rate subsidised body by the state budget.⁷¹ It is a collegiate body, consisting of a Chairperson and four members, elected by the Parliament for a period of five years with a possibility to be re-elected for 5 years more.⁷² Members of the Commission may only be Bulgarian citizens who have: a university degree in law or in information sciences or a master's degree in information technologies; length of service of at least 10 years in their respective field; clean criminal record.⁷³ The Chairperson should be a trained lawyer who meets the above mentioned requirements.⁷⁴

[34]. According to the PDPA within one month after the enforcement of the Act, the Council of Ministers makes a proposal to the National Assembly about the members of the Commission. Within 14 days, after the proposal has been entered, the National Assembly elects the staff of the Commission. The proposal of the Council of Ministers was entered on 9.05.2002 (and was due until 1.02.2002). On 23.05.2002 the National Assembly elected the members of the Commission. The Commission adopted and published its Regulations on 23.07.2002. In compliance with the Regulations, the total number of the staff is 76 full-time positions (including 5 elective positions). The administration is organised in four departments whose powers are regulated in the Regulations, and the functional relations of the units are regulated by internal rules adopted by CPDP. The staff of the CPDP (76 persons) should consist of: five elective positions - chairperson and members of CPDP; one financial inspector; one general secretary, 25 persons

⁷⁰ Bulgaria/Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 6, para.1.

⁷¹ Bulgaria/Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 6, para.2.

⁷² Bulgaria/Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 7.

⁷³ Bulgaria/Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 8.

⁷⁴ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 8, para. 3.

general administration, which consists of Department of Administrative-economic and Financial-accounting Activity; 44 persons - in specialised administration of whom 14 work in the Department of Law and International Affairs, 15 work in Department of Inspection Activity and 15 in Department of Information.⁷⁵ According to the new Regulations adopted in February 2009 the administration of the PDPC should be 81 persons in total, of whom 26 persons are general administration and 48 specialised administration – 12 in legal and international affairs department, 18 – in control and legal department and 18 in the information systems department.⁷⁶

- [35]. The sessions of the Commission are public, in certain cases it may decide to have closed hearings.⁷⁷ The Commission takes decisions by the majority vote of all its members.⁷⁸ The decisions of the Commission on complaints may be appealed before the Supreme Administrative Court.⁷⁹ The Commission issues a bulletin in which it publishes information about its activities and the decisions taken.⁸⁰ By 31 January every year the Commission is obliged to submit an annual report to the National Assembly and the Council of Ministers.⁸¹
- [36]. The Commission has the following powers: 1. analyses and exercises overall control on the compliance with the legislation in the field of personal data protection; 2. keeps a register of Personal Data Controllers; 3. inspects the controllers' activities; 4. gives opinions and permissions in envisaged in legislation cases; 5. issues obligatory instructions to the controllers related to the protection of personal data; 6. upon advance notification imposes temporary suspension on personal data processing that violates the personal data protection rules; 7. reviews complaints against controllers that violate the rights of natural persons to access to their personal data as well as other controllers' or third parties' complaints in relation with their rights under the PDPA; 8. participates in the drafting of legislation

⁷⁵ Bulgaria/*Правилник за дейността на Комисията за защита на личните данни и нейната администрация* [Regulations for the Activity of the Commission for Personal Data Protection and Its Administration] (23.03.2007), par. 3, Concluding Provisions.

⁷⁶ Bulgaria/*Правилник за дейността на Комисията за защита на личните данни и нейната администрация* [Regulations for the Activity of the Commission for Personal Data Protection and Its Administration] (10.02.2009).

⁷⁷ Bulgaria/*Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art. 9, para.4.

⁷⁸ Bulgaria/*Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art. 9, para.2.

⁷⁹ Bulgaria/*Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art. 38, para.6.

⁸⁰ Bulgaria/*Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art. 7, para.3.

⁸¹ Bulgaria/*Закон за защита на личните данни* [Personal Data Protection Act] (01.01.2002), Art. 7, para.6.

containing provisions on personal data protection; 9. ensures implementation of European Commission decisions in the protection of personal data field.⁸²

- [37]. The Commission has competence to supervise both public and private sectors. It is a central administrative authority in the area of personal data protection. The Chairperson and the members of the Commission, or persons authorised by its administration inspect the implementation of the PDPA by prior, current or follow-up checks.⁸³ Prior checks are obligatory when the controller declared that it would process sensitive data – regarding racial, ethnic origin, regarding political, religious, philosophical beliefs, membership in political parties or organisations, associations with religious, philosophical, political or trade union aims, regarding person’s health, sexual life or human genome⁸⁴ or data the processing of which would violate person’s rights and interests according to the Commission’s decision.⁸⁵ Current (regular) investigations are performed upon request of interested persons and upon Commission’s initiative after a monthly plan for control activities is adopted.⁸⁶ Follow-up investigations are performed for implementation of a decision or obligatory instruction issued by the Commission, as well as after it initiates such upon a complaint.⁸⁷ Personal data controllers are obliged to not impede the control over the processing of personal data and to provide the investigating persons with requested information. Any type of professional duty to keep secret cannot be a legal ground to refuse co-operation to the CPDP. All persons who process personal data are obliged to cooperate with the Commission when it implements its duties.⁸⁸
- [38]. Every natural person whose rights under the PDPA have been allegedly violated has the right to complain before the CPDP within one year after he/she was notified about the violation and not later

⁸² Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 10.

⁸³ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 12 (10.11.2006).

⁸⁴ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 5 (23.12.2005).

⁸⁵ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 12, para.2 in connection with Art.17b (10.11.2006).

⁸⁶ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 12, para.3 (10.11.2006).

⁸⁷ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 12, para.4 (10.11.2006).

⁸⁸ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 22 (23.12.2005).

than five years after the violation took place.⁸⁹ The Commission should decide within 30 days. It may decide to give obligatory instructions to the controller, to determine a deadline for demolishing of the violation, or to apply administrative sanction.⁹⁰ The Commission is obliged to send a copy of its decision to the complainant.⁹¹

- [39]. Under the PDPA, as adopted in 2002 and still in force, the Commission was obliged to keep a register of personal data controllers and their registers. The register is public and contains the names of the personal data controllers, the nature of personal data, the legal grounds, the purpose and the way of their processing, the consent required by the individual concerned and the legal act, setting the order of keeping the personal data register. The fee payable for use of information contained in the register is fixed by the Council of Ministers. The Commission issues a certificate to the registered personal data controllers.⁹²
- [40]. Under Art. 15 of the PDPA⁹³ any person who wants to process personal data and to open a personal data register was obliged to notify the Commission in advance by filing a standardised application and documents approved by the Commission. Every personal data controller was obliged to notify the Commission prior to any operation on the whole or partial automatic processing of the personal data collected that is other than the one applied for and on the transfer of personal data to another controller or to a third party. The Commission is free to make prior checks within seven days of notification and issue preliminary instructions on conditions for the personal data processing, the procedure for keeping a register by the controller and on guaranteeing the compliance with PDPA.⁹⁴ The Commission is not obliged to make prior checking on register keeping if the registers: 1. contain personal data about the persons who have relations of employment with the personal data controllers; 2. for statistical or scientific purposes; 3. are to be kept under some legislation and are

⁸⁹ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 38 (10.11.2006).

⁹⁰ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 38, para.2 (23.12.2005).

⁹¹ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 38, para.4.

⁹² Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 14 (in force since 01.01.2002 until 23.12.2005).

⁹³ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 15 (in force since 01.01.2002 until 23.12. 2005).

⁹⁴ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 16, para. 1 (in force since 01.01.2002 until 10.11.2006).

open to the public.⁹⁵ Within 14 days of notification the Commission was to decide on whether to register the person as a personal data controller and enter the controller into its register or to refuse registration.⁹⁶ The refusal of the Commission was subject to appeal to the Supreme Administrative Court within 14 days. With the amendments in 2005 and 2006 of the PDPA the registration regime was liberated and the scope of the act and the powers of the CPDP were narrowed. The CPDP was obliged to register every controller that applied for that. The transfer of data was not a subject of decision and approval of CPDP anymore.

- [41]. The powers given to the data protection authority correspond to the requirements of Article 28 of Directive 95/46/EC and are sufficient to ensure effective data protection. The Bulgarian CPDP should be consulted in the preparation of regulation or the adoption of measures, it has investigative powers, it has powers of intervention, and the power to engage in legal proceedings or to bring violations to the attention of judicial authorities. The process of allocating resources to allow its proper functioning was hindered and slowed during the period 2003-2007 and its administrative capacity is not sufficient to ensure the CPDP uses these powers effectively.

2.1. Resources

- [42]. Since its establishment in September 2002 the CPDP has not had its own working space and had not managed to recruit the envisaged in PDPA staff of 76 people yet in 2008. In September 2002, it used the rooms of two of its members in two universities. Several buildings were viewed by the CPDP after being recommended by the general secretary of the Council of Ministers, but it turned out that other persons and bodies already occupied them.⁹⁷ On 15.09. 2002 one 17 sq.m. room (with three tables, one computer, one laptop, one printer and nine chairs) was emptied at the last floor of the building of the Council of Ministers to be used by the CPDP's five members staff.⁹⁸

⁹⁵ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 16, para.2 (in force since 01.01.2002 until 10.11.2006).

⁹⁶ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 16, para.3 (in force since 01.01.2002 until 10.11.2006).

⁹⁷ Bulgaria/Комисия за защита на личните данни/Годишен отчет за 2002-2003 [Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003], p.4, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

⁹⁸ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003], p.5, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

Lack of space led to postponements of hiring staff. Thus, in 2003 only one person was appointed to deal with the Legal Department. On 6 .06. 2003, the Council of Ministers (without informing the CPDP) decided to give a building in the suburbs of Sofia to the CPDP. The Commission refused it in June, as it was of the opinion the building was quite inappropriate. During the period July-December the Commission sent several proposals for buildings to the Council of Ministers, but none of them led to a solution.⁹⁹

[43]. Although the PDPA and the Regulations for the Activities of the CPDP ranks it is a first-rate operator (meaning it can itself decide how to design and use the approved state budget for its functioning) with budget funding, the Council of Ministers with its Decision 188/2002 classified the CPDP as second-rate operator. This questions the independence of the Commission and hinders its functions because of the lack of information about the budget that it can spend. During 2002 the budget was 195,000 BGN (appr. 97, 500 Euro), but because there was not building and thus only five of all 76 people were appointed, the budget was not spent. For 2003, the budget approved by the minister of state administration was 778, 587 BGN (appr. 389,293 Euro) although the minister of finance agreed to 1 mln. BGN (appr. 500,000 Euro). In December 2003, the budget was not spent again, but the contracts signed by the CPDP with computer companies were not paid. So for 2003 the Commission spent 674,674 BGN (appr. 337,337 Euro), half of which (369,184 BGN) was spent on cars.¹⁰⁰ The staff consisted of 13 people in 2003 (out of the required 76 by law).

[44]. In 2003, another room was given to the CPDP and 2 working places with computers were opened to process 260,000 personal data administrators that applied to be registered at the CPDP. Until June 2005 the staff of the CPDP was 16 employees.¹⁰¹ The Council of Ministers gave one room of 150 sq.m. to the CPDP to keep the archive, but the room burnt out in March 2004. At the end of 2004 after EC proposed that the CPDP started procedures for hiring staff, the documents and interviews for staff took place in the Refugees Agency. Those who were hired after the exams signed contracts in April-May 2005 because of lack of workspace. At the end of 2004 the

⁹⁹ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003], p.6, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁰⁰ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, p.7, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁰¹ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.4, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

CPDP decided to rent a building of 1,526 sq.m. for a monthly rent of 19,838 Euro. The Commission moved there in June 2005 and the computer network and the software for processing all information started working in September 2005. Thirty work places were equipped (apart from the five of the members of the CPDP) and 26 computers were bought, as well as 12 printers and one copying machine.¹⁰²

- [45]. According to the partner investigation under the ‘Justice and Internal Affairs’ chapter of the preaccession negotiations and monitoring, the experts from the European Commission underlined in September 2005 that the current situation with the CPDP does not guarantee the financial independence of the Commission and recommended adequate reform.¹⁰³ The Council of Ministers cancelled its decision declaring the CPDP as a second-rate operator with state budget, but pursuant to Decision 216 of 2005, Art.2, para.4 it labelled the chairperson of the CPDP as a second-rate operator with budget credits’.¹⁰⁴ In 2005, the CPDP spent 1,137,802 BGN (appr. 568,901 Euro), around 500,000 (appr. 250,000 Euro) of which on rent of the building. The staff was increased to 28 employees and 18 students on temporary contracts to enter data in the register for personal data controllers.¹⁰⁵ In 2006, the staff increased to 45 employees. Contests for 37 positions were performed, but only 14 people were approved and appointed as a result of them.¹⁰⁶ In March 2006, the CPDP moved to another building to use workspace of 2177 sq.m., with 31 rooms for 39 employees. The CPDP already had 67 computers, 41 printers, three copying machines and desks for 53 employees.¹⁰⁷ In 2006, the spent budget was 1,431,374 BGN (appr. 715,687 Euro) (871,625 BGN (appr. 435,812,5 Euro) of which spent on maintenance and rent). The PDPA was amended on 10 .11. 2006 and thus the Commission was declared a first-rate operator with state budget and its budget was

¹⁰² Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.5, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁰³ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.11, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁰⁴ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.11, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁰⁵ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.12, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁰⁶ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, p.6, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁰⁷ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, p.11, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

determined in the State Budget Act for 2007.¹⁰⁸ In 2007, the CPDP had 51 employees, it spent 1,726,000 BGN (appr. 863,000 Euro) (857,000 BGN (appr. 428,500Euro) of which for rent and maintenance). In 2007, a PHARE project BG2005/017-586.03.01 for additional capacity building (legislative framework, control activities, complaint mechanisms, wide-raising awareness about data protection issues) of the CPDP and its administrations was implemented together with the Spanish Data Protection Agency.¹⁰⁹

- [46]. The *Сметната палата* [National Audit Office (NAO)] performed an audit about the Commission's activities for the period 1.01. 2003 – 31.12. 2005 and announced its findings on 30 .01. 2007.¹¹⁰ The report finds that the Commission for Personal Data Protection (CPDP) has been busy mainly with buying vehicles and looking for premises for these three years. The main purposes for which the CPDP was established - protection of citizens' personal data, imposing sanctions in cases of violations and keeping a register of the personal data controllers - were left behind. Since its establishment in 2002, the CPDP has completed 17 investigations at citizens' complaints. During its existence, CPDP has imposed no sanctions; the register of personal data administrators has not been created. The NAO press release about the findings in the audit report stated that through its activities during the audited period (1.01. 2003 – 31.12. 2005), the CPDP and its administration did not ensure adequate protection for the individuals in the processing of their personal data. Despite the legal requirements, the CPDP did not function as a permanent working body since the main part of its staff has predominantly maintained working relations with other employers. The National Audit Office stated that the CPDP does not exercise effective control over the activities of the personal data controllers, that the register of personal data controllers and the personal data registers which they keep is still not public and contains insignificant number of registered controllers. In 2005, the incoming registration requests of personal data controllers were processed within the legally prescribed timeframes. However, a great number of the requests submitted in 2003 and 2004 was not registered and processed. The problem with the controllers who had sent incomplete or wrong registration forms by mail in 2003 has not been addressed yet. According to the National Audit Office, no legal

¹⁰⁸ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, p.13, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁰⁹ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2007, p.11, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹¹⁰ Bulgaria/Сметна палата [National Audit Office], Report about the audit of the Activities of the Commission for Personal Data Protection, available in Bulgaria at <http://www.bulnao.government.bg/pages.html?catID=18>.

provisions regulate the registration procedure, and the CPDP has not adopted written rules, procedures and methodology for exercising control over the activities of the controllers. The main emphasis of the control activities was on the investigations after submitted complaints and signals, not on preliminary and current check-ups on risk controllers. According to NAO, the CPDP was not effective and efficient at the review of individual complaints. The processing of the complaints was delayed and the interested persons were not duly informed about the decisions taken by the CPDP. The CPDP did not apply principles of economy and efficiency in the management and spending of its resources. The development and maintenance of major systems - financial management and control, task assignment and supervision, evaluation of the implementation of the tasks - necessary for the correct management of resources has not been finished. The budget has not been spent economically.

[47]. The National Audit Office submitted around 50 recommendations for the improvement of the effectiveness and efficiency of the activities in cases of illegal access to personal data to the Council of Ministers and the Chairperson of the CPDP. Among these were such for capacity building, for bringing the labour contracts of the members of the CPDP in compliance with the requirements of the legislation, for developing and adopting new Regulations for the Activities of the CPDP and its administration, for developing principles according to which the control activities to be performed and for developing and adopting regulations about the minimum level of technical and organisational measures that controllers should undertake to guarantee the effective protection of personal data.

[48]. The National Audit Office also recommended adopting regulations for new simplified procedures for:

- registration of personal data controllers in the Public Register, kept by the CPDP;
- informing of the CPDP in cases when preliminary set conditions have been altered;
- the review and processing of complaints, requests for official statements and harmonisation of draft regulations with other regulations and adopting procedures for:
 - imposing temporary bans for processing personal data;

- issuing permits or prohibitions for holding processed personal data as anonymous data;
- issuing preliminary and obligatory instructions and developing adequate system for financial management and control and to ensure conditions for its proper functioning.

INDEPENDENCE

[49]. The independence of CPDP is quite disputable first because of the fact that the members are proposed by Council of Ministers and voted for by National Assembly and second because of its financial dependence on political will during the first five years of the existence of CPDP.

ACTIVE ON ITS OWN INITIATIVE

[50]. This research had found two examples in 2007 of the CPDP of becoming active on its own initiative. It states in its reports that it performed investigations or check-ups on its own initiative, but they all were provoked by complaints or questions that became complaints from citizens or were in implementation of its duties to perform prior checks for certain groups of personal data controllers. Its case-law on complaint procedure shows it very often performs investigations after being approached by citizens with certain complaints. A special request was addressed to the CPDP by the researcher asking for information about the pro-active initiatives of CPDP. The CPDP replied¹¹¹ that it acted on its own initiative in the following cases:

- Twice in 2006 – the cases were not described.
- In 2007, after media articles about illegal access to the database of the Sandanski department of the National Income Agency.
- On 2.11.2007 after a television report on personal data, disseminated the elections lists in Sofia.
- On 7.04.2008 after a newspaper article about the decision of the Sofia Municipal Council obliging owners of cars to write their personal identification number on their cars in order to benefit their right to park free of charge. Obligatory instructions were issued by the CPDP to the municipal council for replacing of the above-mentioned system with a stricter one and they were adopted.
- On 9.04.2008 - after an article about the obligation for the train passengers (who use the sleeping wagons) introduced by the Bulgarian Railway Company to show their personal identification number to be able to buy a

¹¹¹ Written reply from CPDP, dated 08.01.2009.

ticket. The CPDP is still preparing a statement on the case to be given in January 2009.

- The CPDP initiated proceedings in relation to the media reports in August 2008 about the leaking of information from the database of the *Националната здравноосигурителна каса* [National Health Insurance Fund]. Obligatory instructions were elaborated, but also criminal investigation is pending.
- The CPDP initiated also proceedings for the way the Sofia Public Transportation Company processes personal data in relation to issuing electronic public transportation cards. Obligatory instructions were issued.

[51]. In 2002-2003, 14 checks were performed most of which because of complaints against municipalities.¹¹² In 2005, the CPDP reported it visited and checked 60 controllers of personal data – banks, municipalities and healthcare bodies mainly.¹¹³ The CPDP planned and performed those checks. In 2006, the CPDP reported that it checked banks, state administration, Internet providers, telecommunications, video monitoring, and direct marketing companies. For all 54 investigations it was explicitly reported that they were initiated by individual complaints. The overall conclusions are: the difficulties of the CPDP to get access to the personal data registers, the lack of keeping the timeframe for the investigations, the lack of any legal regulation for video monitoring and the lack of awareness of some service providers of their obligation to register as personal data controllers. The biggest number of checks had been performed in state administration.¹¹⁴ In 2007, investigations had been performed in 85 % of the complaints proceedings¹¹⁵ (27 complaints and 19 signals), two were the checks initiated by the CPDP (no info is available for them – one is the banking sector starting on 25.06.2007, the report is not available yet) and 143 prior checks had been performed of controllers that keep and process sensitive data, or data that may violate the rights and interests of other persons or that have instructions by the CPDP to register under PDPA. In 2007, the CPDP

¹¹² Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, p.15, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹¹³ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.24, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹¹⁴ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, pp.36-37, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹¹⁵ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2007, p.26, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

issued obligatory instructions in 41 cases (out of 191 checks) and in 12 cases administrative sanctions had been imposed.¹¹⁶

MONITORING ROLE

[52]. The CPDP is responsible for the protection of personal data kept in registers by personal data controllers (PDC). The Commission performs checks and investigations of such administrators and is supposed to monitor the overall implementation of personal data protection legislation. It performs its monitoring role by prior checks of certain groups of PDC. Regular investigations may be done if the Commission plans them or upon request by concerned persons. Certain groups of PDC are obliged to file an application for registration to CPDP if they want to process and keep personal data. This is how the CPDP can become aware of such PDC and while registering them can monitor their activities. It can perform investigation on its own initiative but it used that power rarely.

PUBLICITY OF DECISIONS

[53]. The website of the CPDP was designed and operating since November 2005.¹¹⁷ Before that some decisions of the CPDP were published in the internet websites of the Ministry of Regional Development, the *Access to Information Program*, *Center for Policy Modernisation* and others.¹¹⁸ The bulletins of the CPDP where the Commission is supposed to publish its decisions and opinions started being published on the website since December 2005/1 digest (4 decisions published), in 2007/1 digest (7 decisions were published), in 2007/3 digest - 3 decisions, in 2007/4 digest - 14 decisions (the majority of which from 2006), in 2007/5 digest - 7 decisions, in 2007/6 digest - 25 decisions, in 2008/2 digest -13 decisions. It is obvious while reading the bulletins that the numbers of the decisions are not consequent, that some decisions are not published and some of the decisions that are published are not numbered. The first decisions were published at the end of 2005 and it took a month or several months for a decision to be published for unknown reasons. The researcher sent a special request about that to the CPDP. The CPDP replied¹¹⁹ that the bulletin is being

¹¹⁶ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2007, p.30, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹¹⁷ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.30, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹¹⁸ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.29, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹¹⁹ Written reply from CPDP, dated 08.01.2009.

issued every second month and the decisions made by the CPDP during that period are published in the next bulletin. The decisions based on signals (and not on complaints) are not numbered. The numbers of the decisions are the same as the numbers of the complaints and only dated differently. The decisions are not consequent, as some issues from the complaints require more time for research and check and thus the procedure takes longer than prescribed by law.

OPINIONS OF THE WORKING PARTY

- [54]. The Working party is mentioned in the Annual reports of the CPDP and was quoted in several decisions of the CPDP. There is no mention in Bulgarian data protection legislation about the working party's decisions and their influence.

ADVISORY ROLE

- [55]. The CPDP initiated¹²⁰ a meeting with the Националната агенция по приходите [National Income Agency] and the Националният осигурителен институт [National Insurance Institute] because of the problem with registering labour contracts without the awareness and the consent of the employees. Mutual activities were discussed to better protect the rights of the employees. The CPDP also met the Агенцията по вписванията [Registering Agency] to clarify the methods of achieving operational compatibility of the data registers and databases, especially concerning its Trade register. The CPDP also elaborated a plan with the Customs Agency related to Shengen accession.
- [56]. The CPDP issued 149 statements upon request of different authorities during 2002-2003. Five were initiated by requests of the Ministry of Interior regarding drafts of the Council of Ministers' decisions regarding a PHARE project, mutual exchange of data with Netherlands and illegal trafficking of drugs with Malta, two were requested by municipalities regarding local elections, six were regarding legal cases, two regarding provision of a personal identification number, 125 regarding registration of personal data controllers. In practice, the CPDP is excluded from the partners who agree upon legislative drafts in the National Assembly. This situation hinders the CPDP to perform its obligations under Art.10, para.1, item 1 of the PDPA. ¹²¹ The Minister of Justice included the CPDP in the

¹²⁰ Written reply from CPDP, dated 8.01.2009.

¹²¹ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, p.14, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

working group drafting the Protection of Participants in Penal Proceedings Act. 122

- [57]. In 2005, the CPDP issued 283 statements of which 263 regarding implementation of the PDPA and 20 regarding drafting of personal data legislation. Those concerning implementation of PDPA were rather requests for information whether a violation of PDPA is at place and were transformed into complaints. The rest of the statements were issued upon requests by the Ministry of Interior.¹²³ In 2006, the CPDP issued statements on drafts elaborated by the Ministry of Interior and Ministry of Finance. Since 23.12.2005 the CPDP is obliged to issue statements each time when a draft in connection with personal data processing or keeping is elaborated. In 2006, the CPDP received requests for four bills, 29 drafts of Council of Ministers' decisions (for a compliance review of agreements between the Bulgarian State and other countries) and one request was about the *Закон за достъп до обществена информация* Access to Public Information Act.¹²⁴ Adopted drafts were those with amendments of the *Закон на Министерство на вътрешните работи* [Ministry of Interior Act], *Закон за изменения и допълнения на Закона за контрол над взривните вещества, огнестрелните оръжия и боеприпасите* [Law for Amendments and Additional Provisions of the Law for Control over the Explosive Substances and Weapons], *Закон за публичност на имуществото на лица, заемащи висши държавни длъжности* [Publicity of the Property of Persons at High State Positions Act], *Закон за чистотата на атмосферния въздух* [Purity of the Air Act]. In 2006, the CPDP issued 485 advisory statements, 442 of which are in relation with implementation of PDPA.¹²⁵ For 2007, no information was found by the research in the reports of the CPDP.

RAISING AWARENESS

- [58]. In June 2003, the CPDP, the Ministry of Justice, the *Access to Information Program* and Ruse municipality organised a seminar for raising awareness about the PDPA and PDC's obligations under the

¹²² Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, p.15, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹²³ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.22, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹²⁴ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, p.38, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹²⁵ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, p.41, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

law. The seminar was addressed to the most of the municipalities in Northern Bulgaria and some from Southern Bulgaria that participated.¹²⁶ In June 2003, a German-Bulgarian meeting took place on which the two Commissions exchanged experience and met some of Varna and Sofia municipalities' officials.¹²⁷ In 2003, the CPDP worked together with *Access to Information Program* (an NGO) that led a campaign for raising wide public awareness of the PDPA. Within the campaign a round table with media and some of the main personal data controllers – municipalities, National Audit Office, insurance companies, Health Insurance Fund etc. took place in April 2003.¹²⁸ In June 2004, the CPDP organised a seminar with the municipalities from Eastern Bulgaria in Sozopol about the implementation of PDPA.¹²⁹ In December 2004, a seminar on electronic documents and signature and protection of sensitive data was held.¹³⁰ In March 2005, a seminar on Classified Data Act and PDPA took place between the CPDP and the Commission on Security of Information. In July 2005 a seminar on PDPA with the municipality in Tryavna was held. A work meeting with State Agency for Child Protection and National Social Security Fund were held to discuss the personal data issues in 2005.¹³¹

- [59]. In 2006, the CPDP started issuing a quarterly bulletin and issued internal rules for issuing the bulletin and the website.¹³² A brochure about the activities and powers of the CPDP was printed which informs the citizens about their rights regarding personal data issues.¹³³ In December 2006, a work meeting with the Protection

¹²⁶ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, p.16, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹²⁷ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, p.17, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹²⁸ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, p.18, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹²⁹ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.25, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹³⁰ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.26, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹³¹ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.28, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹³² Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, p.42, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹³³ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, p.44, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

Against Discrimination Commission took place¹³⁴ and an Ethic Code was elaborated by the CPDP for all personal data controllers. Work meetings with Polish, Romanian and Spanish commissions for personal data protection took place in March and June 2006.¹³⁵

- [60]. In September 2006, the CPDP organised a work meeting with the Ministry of Education 28 regional centres for inclusive education of children with special needs to raise awareness among them about the PDPA.¹³⁶ In May 2007, together with *Център по право на информационните и комуникационните технологии* [Centre for Information and Communication Technologies Law] the CPDP organised a seminar about implementation of European legislation in the field of personal data protection in Bulgaria and presented European practice. An international conference on personal data protection with the participation of Technical University-Sofia, Bulgarian Scientists Union, Bulgarian State Agency for Information Technologies and Electronics, Electrotechnics and Messages Union was organised in September 2007.¹³⁷

¹³⁴ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, p.46, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹³⁵ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, pp.53-54, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹³⁶ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2007, p. 38, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹³⁷ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2007, p.39, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

3. Compliance

- [61]. The first Protection of Personal Data Act (adopted in January 2002) defined personal data as any information for an individual, revealing his/her physical, psychological, mental, family, financial, cultural, or public identity¹³⁸ and personal data of individuals related to their participation in civil associations, or in the managing, controlling and supervising bodies of legal persons, as well as holding a state position.¹³⁹ The amendments in 2005 and 2006 provided that personal data would be any information regarding a natural person who is identified or might be identified in a direct or non-direct way by identification number or by one or several specific indicators.¹⁴⁰ The personal data should be processed: in a lawful way, processing should be directed to concrete, specified and legitimate purposes and the personal data should not be further processed in a way incompatible with these purposes, additional processing for historic, statistical or scientific purposes is acceptable if the controllers ensure appropriate protection by guaranteeing that the data is not processed for other purposes, personal data should be compatible with the aims and to not exceed the aims for which they are processed, personal data should be accurate and updated if necessary, personal data should be erased or corrected when it is established that they are incorrect or disproportionate to the purposes for which they are processed, personal data should be maintained in a way allowing identification of the natural persons for a period not longer than the necessary for the purposes, personal data to be kept for historic, statistical or scientific purposes are kept in a way not allowing identification of the natural persons.¹⁴¹
- [62]. According to Art. 3 of this PDPA ‘personal data controller is a public authority or natural or legal person authorised to specify the type of the data processed, the purpose of processing, and the methods of processing and of protection in compliance with the provisions of PDPA’ The amendments in this article introduced on 10.11.2006 provided that the controller can only specify the purposes and the methods of processing and if it is a public authority body the type,

¹³⁸ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 2, para.1.

¹³⁹ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 2, para.2 .

¹⁴⁰ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 2, para.1 (23.12.2005, 10.11.2006).

¹⁴¹ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 2, para.2 (23.12.2005).

methods and purposes are defined in legislation. The personal data controller must process the personal data on his own or entrust them to another personal data processor. Institutions must process personal data only in cases provided by law.¹⁴² Personal data are kept in personal data registers. Personal data processed by institutions are data for official use only.¹⁴³

- [63]. Processing of personal data is acceptable when at least one of the following requirements is fulfilled: processing is necessary for compliance with legal obligations of the controller, the natural person expressed consent, the processing is necessary in relation to a contract in which the data subject is one of the parties, the processing is necessary to protect the life or health of data subject, when it done as an implementation of a given task that is in public interest, when it is an implementation of a legal duty of a public authority, when the processing is necessary as an implementation of the legal interests of the controller or a third person to which personal data is disclosed unless the interests of the natural persons are predominant to the above mentioned.
- [64]. Processing is acceptable for the purposes of journalism, literature or arts if it does not violate the right to personal life.¹⁴⁴
- [65]. Processing of personal data which disclose the racial or ethnic origin, political, religious, philosophical beliefs, membership in political parties, organisations, associations with religious, philosophical or political or trade union purposes, which relate to health, sexual life or the human genome is prohibited by Art. 5 of PDPA. Such processing would not be prohibited if: personal data controller is doing that as an implementation of legal obligations under the employment legislation, if the data subject gave his/her consent, if the processing is necessary for protection of life or health of the data subject or other person and the condition in which the person is does not allow him/her to express consent or there are legal obstacles for that, an NGO is processing such data while performing its lawful activities and with certain protection if the processing is related only to the members or persons with which it contains permanent relationship for its purposes, the data cannot be disclosed to third persons without the consent of the person to whom they relate; processing is related to publicly announced data by the data subject or it is necessary for estimation, exercising or protection of rights in judicial order, processing is

¹⁴² Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 3, para.3.

¹⁴³ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 4, para.1.

¹⁴⁴ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 4, para.2

necessary for the purpose of preventive medicine, medical diagnostics, provision or management of healthcare services, if the data is processed by medical specialist, obliged by law to keep professional secret, or other person obliged by law to keep professional secret, processing is done only for journalistic, artistic, literary purposes and does not violate the right to personal life.

- [66]. An act of a state or local government body, which may have legal consequences for a given person, and which contains an evaluation of his/her behaviour, should not be based on the automatic processing of personal data only.¹⁴⁵
- [67]. In December 2005, the PDPA was amended in the chapter which regulated the controllers of personal data. The latter are obliged to apply before the CPDP prior the start of personal data processing.¹⁴⁶ Within 14 days after the application, the CPDP registers the controller. Registration is not required when the controller maintains a register which by law is supposed to ensure public information and the access to it is free. People with legal interest can access it or process data which disclose membership in political parties, organisations, associations with religious, philosophical or political or trade union purposes. The Commission can eliminate the obligation for registration in certain cases.¹⁴⁷
- [68]. The controllers are obligated to take all necessary technical and organisational measures to protect the data from accidental or illegal destruction, or accidental loss, or inappropriate access, alteration, distribution and other forms of illegal processing.¹⁴⁸ When the data is transferred in an electronic way, the controller is obliged to take special measures. The measures should ensure a level of the protection compatible with the risks of the processing and the type of data to be protected. Each controller adopts the measures with Guidelines/Instruction. CPDP determines the minimal level of these measures in an ordinance. According to this ordinance, the controllers may appoint one or more persons to protect personal data.¹⁴⁹ This person is a natural or legal person with the necessary competency and expertise, which is appointed or empowered by the controller by a

¹⁴⁵ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 5.

¹⁴⁶ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 17 (23.12.2005, 10.11.2006).

¹⁴⁷ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 17, para.2.

¹⁴⁸ Bulgaria/ Закон за защита на личните данни [Personal Data Protection Act] (01.01.2002), Art. 23.

¹⁴⁹ Bulgaria/Наредба 1 от 7 февруари 2007 г. за минималното ниво на технически или организационни мерки и допустимия вид защита на личните данни (23.03.2007), Art. 3, para.1.

written document in which all rights and obligations in connection with ensuring the minimal necessary technical and organisational measures for protection of personal data while being processed are enlisted.¹⁵⁰ No requirements about these persons are mentioned in legislation. Persons to raise awareness for personal data protection are not regulated in legislation either. The only detailed provision the researcher found on appointment of data protection officers is in relation with classified data protection in the Classified Data Protection Act (adopted on 30.04.2002).¹⁵¹ The requirements for the appointment are: sole Bulgarian citizenship, permission issued by the State Agency on Security of Information and training on security of information.

3.1. Practice on Registration of PDC

[69]. The practice of the registration of personal data controllers shows that the CPDP was not ready to develop and prepare its administrative capacity to implement its duties. The CPDP published the registration form in February 2003. Until the end of August 2003, 10,000 personal data controllers applied and the CPDP decided that most of the controllers did not know about their duty to register so it extended the deadline for registration up to 1.12. 2003. Four people at the CPDP were supposed to work with these applications which until the end of December of 2003 were 227, 251 and out of them only 8,247 had been registered.¹⁵² Access to personal data registers was supposed to be done with the permission of the CPDP by law and the same was relevant for transfer of personal data between controllers. This provision was revoked in 2005. But until December 2003, 59 applications for access to personal data registers were filed and 38 of them were approved.¹⁵³

¹⁵⁰ Bulgaria/Наредба 1 от 7 февруари 2007 г. за минималното ниво на технически или организационни мерки и допустимия вид защита на личните данни (23.03.2007), Art. 1, item 1 of the Additional Provisions.

¹⁵¹ Bulgaria/Закон за защита на класифицираната информация [Classified Data Protection Act] (30.04.2002), Art. 20.

¹⁵² Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, pp. 11-12, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁵³ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, p.13, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

[70]. During 2005, the controllers that wanted to register themselves were 270,015; 17, 691 were registered and 389 received refusal.¹⁵⁴ 224 persons, of those that wanted access to their personal data to be permitted, were allowed to get access, 14 not and 66 applications were pending. In 2006, the CPDP was asked to register 4,431 administrators and registered 14, 279 of those who applied the previous years. Thus, in 2006, out of 274,446 that applied 31,970 were registered.¹⁵⁵ In 2007, the CPDP received 6,311 applications for registration and registered 16,955 administrators from previous years.¹⁵⁶

¹⁵⁴ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, p.19, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁵⁵ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, p.17, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁵⁶ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2007, p.19, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

4. Sanctions, Compensation and Legal Consequences

- [71]. The case-law, published in the bulletins issued by CPDP, regarding the complaint procedure shows that natural persons complain of illegal processing of their personal data mainly against banks, the Ministry of Interior, real estate agencies, former prosecution officers who wrote books about their experience as prosecutors, courts and municipalities. Apart from one (1,500 BGN – 750 Euro), no financial sanctions were imposed. The most usual sanction is instruction for elaboration of internal rules for personal data protection and letting the CPDP know that they were elaborated. When the personal data is still available in registers, databases or websites of the controller, after the aim was achieved, the CPDP gives instructions the data to be deleted and a report about that to be sent back to it. However, there is not evidence in the CPDP annual reports and bulletins that CPDP either received feedback or checked whether that had happened. This is why it is impossible to understand how effective these sanctions were. The director and directors of two administrative departments at the CPDP interviewed by the researcher gave information that they had not kept statistics on the controllers replies after being instructed and that there were some controllers that did not reply and in 2008 one field check was underway.¹⁵⁷ The CPDP servants also stated that there are more financial sanctions imposed that were appealed in the court and the cases are still pending.
- [72]. In its reply¹⁵⁸ to the request of the researcher, the CPDP stated that in 2007 it issued 12 acts for discovering administrative violation and ten acts for imposing the total of 115,000 BGN (57,500 Euro). In 2008, 15 such acts were issued for imposing the total of 30,000 BGN (15,000 Euro).
- [73]. The obligatory instructions, issued by the CPDP because of the complaint procedure were as follows¹⁵⁹: two in 2004, 24 in 2005, 29 in 2006, 20 in 2007 and 17 in 2008. Obligatory instructions are issued also after prior checks – 34 in 2007 and 42 in 2008. For 48 of them a

¹⁵⁷ The researcher interviewed Stoyan Danov – head of the Control Department at CPDP, Jivko Borisov – head of the Information Department at CPDP and Veneta Shopova – chairperson of the CPDP on 19 December 2008.

¹⁵⁸ Written reply from CPDP, dated 08.01.2009.

¹⁵⁹ Written reply from CPDP, dated 08.01.2009.

reply from the personal data controllers was received to confirm that the prescribed measures were taken and the evidence for that was applied. For 16 of them a notification was sent back to CPDP that the instructions were not received by the controllers and were sent again. For the rest 12 checks would be performed.

- [74]. The decisions published in the bulletins in 2005 (the first one issued in December 2005), 2006 and 2007 are 74. Of them 35 were initiated by natural persons against state or municipal authorities. Fifteen of the applications were declared by the CPDP as lacking legal grounds. In 36 cases the CPDP found violations of the PDPA and in 38 cases it issued obligatory instructions to the personal data controllers most of which oblige them to issue internal rules for processing, keeping and destroying personal data.
- [75]. In 2006, the checks performed by CPDP were 54 and 46 of them were initiated by natural persons who filed a complaint or signal, three were initiated by legal entities, two were initiated by the CPDP, one - by a foreigner, two – because of a transfer of personal data abroad.¹⁶⁰
- [76]. In 2007, out of 191 checks and investigations, 143 were prior ones and 46 were because of complaints and signals. In 53 cases violations of protection of personal data legislation were found out of which in 41 cases obligatory instructions were addressed to the controllers and in 12 cases administrative violation was found and act for estimating this was issued. Among the 12 cases 26% were violations found in the consumers and financial sector and 8% in each of the following sectors: healthcare, telecommunications, state administration, human resources.¹⁶¹ The violations in consumers' and financial sector are: lack of organisational and technical measures for protection of personal data from accidental or illegal loss or damage or other forms of illegal processing, the data was not erased after the aim for which it was collected was achieved, refusal for co-operation by the controller while the check or investigation was taking place. The acts of estimation of administrative violation were addressed in 80% of the cases to natural persons appointed by the controllers and 20% of the cases - directly to the controller. The obligatory instructions were issued by the CPDP mainly after prior checks of the controller or after the CPDP received a complaint. In most of the cases the instructions aim to ensure the appropriate level of protection of personal data kept in registers. The perpetrators most often did not prepare internal rules

¹⁶⁰ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, p.27, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁶¹ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2007, pp. 30-31, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

for the measures and methods for personal data protection, did not receive the consent of the data subject, did not take organisational and technical measures for limitation or tracking the access to the registers kept by them.¹⁶²

- [77]. The case law of the CPDP does not contain any evidence of discussion about the importance of proof of intent.
- [78]. In the Annual report and case-law published in the quarterly bulletins the CPDP did not mention anything about the legal consequences after it issues a decision finding violation of personal data protection legislation. The most often measure used by the CPDP is issuing an obligatory instruction to the perpetrator, but there is no evidence that the perpetrator obeys these instructions. Financial sanction was imposed once to a legal entity (real estate agency) because it uploaded and kept the personal data (scanned ID card data) of a former employee on the webpage of the agency stating that the person steals and warning people to whom she offers services to refuse. The sanction was 1,500 BGN (appr. 750 Euro). The CPDP often mentions in its reports that personal data administrators are not aware of all obligations they have under PDPA and this is often the reason why they violate it.
- [79]. Apart from several seminars with municipalities and prior checks performed by CPDP to personal data controllers mentioned in the annual reports there is not evidence that CPDP makes efforts to enforce the data protection legislation. It can be concluded that enforcement of data protection legislation depends largely on personal initiative of data subjects. The latter are not sufficiently informed about their rights (which have changed during the period of five years as legislation was amended several times). This is why the CPDP mentions in its reports often that the complaints were sent as questions, signals, requests for information whether certain action is a violation or not. No information was found by this research about data subjects being assisted by the CPDP. Legal assistance or representation in data protection cases before the CPDP or the court is not institutionalised and the complainant carries the financial risk of legal procedures in data protection cases.
- [80]. Regarding personal data protection in the context of employment there is no specific provision in the PDPA. Judging by the case law of the CPDP there are problems with video monitoring of employees without

¹⁶² Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2007, p.33, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

their consent and without any information about the aim, methods and protection of this monitoring.¹⁶³ In some cases applicants complained of processing of their personal data by the employer after they left the job. No evidence was found by this research about work councils' assistance to the employees' personal data protection.

¹⁶³ Bulgaria/Комисия за защита на личните данни, Decision 4 (08.02.2006), published in Bulletin 1/2007, Decision 40 (13.09.2006), published in Bulletin 4/2007, Decision 6 (17.05.2006) published in Bulletin 3/2006, all bulletins available at: <http://www.cdpd.bg/buletin.html>.

5. Rights Awareness

- [81]. This research did not find any studies on awareness regarding data protection law and rights in the population. The only information regarding a rights awareness raising campaign about personal data protection rights was provided by *Access to Information Program* (NGO) that carried it out in 2003.¹⁶⁴ The project was funded by European Initiative for Democracy and Human Rights. Under this project, 10,000 brochures and posters were printed and distributed and three trainings for 210 persons - personal data controllers on how to implement Protection of Personal Data Act were organised.

164

http://www.aip-bg.org/library/projects/zzld_bg.htm, last accessed on 10.01.2009.

6. Analysis of deficiencies

- [82]. The main deficiencies regarding effective data protection and effective bodies are lack of compliance with international standards while the national data protection legislation was drafted and adopted, which led to several amendments that confused those who were supposed to implement it, lack of rights awareness after this legislation was adopted, lack of administrative capacity of the data protection body, lack of proper and consistent implementation of this legislation and lack of transparency and unified and clear practice of the data protection body.
- [83]. *Access to Information Program* - the most active NGO in the field of data protection - was specifically asked to comment on the deficiencies and problems identified in their practice. Their comments are based on their experience with cases of people who ask for legal aid in order to ensure protection of personal data.¹⁶⁵ According to them it is a wide spread practice for the personal data controllers to collect and keep much more personal data than needed in order to implement their activities and duties. Official personal data documents are requested and kept by them unnecessarily. Very often the citizens ask whether it is illegal to install video cameras in the public space without notifying those who are supposed to be monitored and filmed. Another problem is publishing of different lists, containing personal data. For example a district court puts all certificates that it issues for people who do not have a criminal record on the wall in its building and thus they are accessible for everyone. The certificates contain personal identification numbers, three names and address of their holders. Another example is an organisation that organises early prevention program against breast cancer that requires all personal data in order to perform prophylactic examinations. It puts the lists with scheduled examinations on the wall and the lists contain the names, addresses and personal identification numbers of the women who would receive the free of charge service. The citizens often complain of the refusals of access to their personal data regarding their health. The Ministry of Interior often refuses to ensure access to citizen's personal data kept by it. Such cases are described in the Annual reports of the AIP about the situation of access to information in Bulgaria.¹⁶⁶

¹⁶⁵ Written reply by Fani Davidova – lawyer at Access to Information Program, dated on 22.12.2008.

¹⁶⁶ http://www.aip-bg.org/rep_bg.htm, last accessed on 10.01.2009.

6.1. Legislative deficiencies

- [84]. According to Access to Information Program there are several recommendations still valid regarding the legislation and practice in the personal data protection field.¹⁶⁷ The personal data protection legislation should be amended to be in compliance with international standards so that a balance between this protection and access to information right be ensured. Art. 34, para.3 of the Personal Data Protection Act should be amended to introduce obligation of the controllers to apply the triple test under Art.8, para.2 of the European Convention for Protection of Human Rights in cases of a conflict between access to personal data and national security arises. While applying the test the controllers should be obliged to reason their decisions in written and to point out also factual ground for that. A thorough and systematic regulation of access to personal data in the healthcare needs to be introduced. The right of the patients to access clear - information about their health status, need of treatments and possible risks should be defined and separated and the rights to access to all their personal health status documentation should be regulated. All personal data related to origin and civil registration should also be regulated in a thorough and systematic way in order to comply with Personal Data Protection Act. In order to facilitate the registration of personal data controllers an on-line register should be introduced to allow the options to register on-line and to search in the register. No areas that need protection, but were excluded from the scope of personal data protection, were identified. On the contrary the tendency is to 'overprotect access to information with the cover ground of personal data protection. The amendments in the Personal Data Protection Act in 2006 regarding the access to personal data and the registration of the controllers brought back the regime of the illogical registration of all legal entities including those that employed one or two people staff. In 2006, Art.35 was revoked and it allowed the free transfer of personal data to third parties when the data is being kept in public registers or documents containing public information. Even when this article was in force AIP identified often refusals of access to public documents because of personal data protection. In practice even more often cases of such refusals can be expected after Art. 35 was revoked. Even the three names of people who are state or public servants are considered personal data in practice and the lists with them are protected. Thus, access to public information is dependent on the personal will of a certain servant.

¹⁶⁷ Written reply by Fani Davidova – lawyer at Access to Information Program, dated on 22.12.2008.

Main deficiencies would be reduced if legislation is reviewed and amended to be in compliance with international standards. For this purpose, experts in the field should be involved in the working group that would draft them. So far none of the members of the CPDP was involved in such process. Additionally, sufficient resources should be allocated to allow the CPDP to have its own permanent building, the full number of qualified and regular staff, the possibility to hire specialists for certain tasks, available funding for rights awareness and advise to personal data controllers. It is needed that total practice of the CPDP is thoroughly researched by its own members and administration to keep it consistent and use it as a resource for further optimisation of the practice on personal data protection. It is also needed that CPDP draft general rules or frequently asked questions section on its website (and probably also issue a brochure) to facilitate citizens and controllers to implement properly the data protection legislation. The CPDP needs also to impose financial sanctions itself and to review at regular periods of time (every 3 or 6 months) whether its obligatory instructions to controllers are obeyed and to include all this information in its annual reports and bulletins.

7. Good practices

- [85]. This research did not find any examples of good practice in personal data protection field in Bulgaria.

Annexes

Annex 1 – Tables and Statistics

| | 2000 | 2001 | 2002 | 2003 | 2004 ¹⁶⁸ | 2005 | 2006 | 2007 |
|-------------------------------------|------|------|--|---|---------------------|--|--|--|
| Budget of data protection authority | - | - | 195, 000 BGN (97,500 Euro) ¹⁶⁹ | 778,587 BGN (389,293 Euro) ¹⁷⁰ | N/A | 1,252,613 BGN (568,901 Euro) ¹⁷¹ | 1,482,916 BGN (715,687 Euro) ¹⁷² | 1,622,000 BGN (863,000 Euro) ¹⁷³ |

¹⁶⁸ Information about the activities and resources of the CPDP for 2004 is lacking in all publicly available documents. The CPDP was asked about that on 19.12.2008 in an interview with its chairperson Veneta Shopova. The chairperson and the representatives of the administration at this meeting claimed it is available in the annual reports but could not point out where exactly.

¹⁶⁹ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, p.6, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁷⁰ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, p.6, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁷¹ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.11, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

| | | | | | | | | |
|---|---|---|------------------|-------------------|-----|---|-------------------|-------------------|
| Staff of data protection authority | - | - | 5 ¹⁷⁴ | 13 ¹⁷⁵ | N/A | 28 ¹⁷⁶ | 45 ¹⁷⁷ | 51 ¹⁷⁸ |
| Number of procedures (investigations, audits etc.) initiated by data protection authority at own initiative | - | - | 0 | 0 | N/A | 60 obligatory prior checks ¹⁷⁹ | 2 ¹⁸⁰ | 2 ¹⁸¹ |

¹⁷² Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, p.12, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁷³ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2007, p.9, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁷⁴ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, p.4, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁷⁵ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, p.8, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁷⁶ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.12, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁷⁷ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, p.7, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁷⁸ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2007, p.6, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁷⁹ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.24, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁸⁰ Written reply from the CPDP, dated on 08.01.2009.

¹⁸¹ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2007, p.30, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

| | | | | | | | | |
|---|---|---|-----|----------------------|----------------|-----------------------|--------------------------------|-----------------------|
| Number of data protection registrations | - | - | N/A | 8,247 ¹⁸² | N/A | 17,691 ¹⁸³ | 14,279 ¹⁸⁴ | 16,955 ¹⁸⁵ |
| Number of data protection approval procedures | - | - | N/A | 0 approved | 4,829 approved | 12,862 approved | 14,279 ¹⁸⁶ approved | 16,955 ¹⁸⁷ |

¹⁸² Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2002-2003, p.11-12, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁸³ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.19, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁸⁴ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, p.17, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁸⁵ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2007, p.19, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁸⁶ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, p.17, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁸⁷ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2007, p.19, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

| | | | | | | | | |
|---|---|---|-----|---|-----|--|--|---|
| | | | | | | | | |
| Applications for access to personal data registers or exchange of personal data between two controllers | - | - | N/A | 59 , 38 permissions for access to personal data, 13 – refusal for access, 8 pending | N/A | 304, 224 permissions for access, 14 – access | procedure amended, no obligation for PDA | - |

| | | | | | | | | |
|--|--|--|--|--|--|-----------------------------------|--|--|
| | | | | | | refused 66 - pending 188 | | |
|--|--|--|--|--|--|-----------------------------------|--|--|

¹⁸⁸ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.21, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

| | | | | | | | | |
|---|---|---|-----|-----|---------------------------------|----------------------------------|----------------------------------|--------------------------------------|
| Number of complaints received by data protection authority | - | - | - | 33 | N/A | 74 ¹⁸⁹ | 102 ¹⁹⁰ | 75 ¹⁹¹ |
| Number of complaints upheld by data protection authority | - | - | N/A | N/A | N/A | N/A | N/A | N/A |
| Follow up activities of data protection authority, once problems were established (please disaggregate according to type of follow up activity: settlement, | - | - | - | N/A | 2 obligatory instructions | 24 obligatory instructions | 29 obligatory instructions | 20 obligatory instructions, 41 |

¹⁸⁹ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2005, p.22, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁹⁰ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2006, p.21, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁹¹ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2007, p.24, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

| | | | | | | | | |
|---|---|---|-----|-----|-----|--|-------------------------|--|
| warning issued, opinion issued, sanction issued etc.) ¹⁹² | | | | | | | | obligatory instructions ¹⁹³ |
| Sanctions and/or compensation payments in data protection cases (please disaggregate between court, data protection authority, other authorities or tribunals etc.) in your country (if possible, please disaggregate between sectors of society and economy) | - | - | N/A | N/A | N/A | Obligatory instructions, 2 decisions appealed in Supreme court | Obligatory instructions | 10 decisions for 115,000 BGN (57,500 Euro) in total ¹⁹⁴ |
| Range of sanctions and/or compensation in your country (Please disaggregate according to type of sanction/compensation) | - | - | - | - | - | 1500 BGN (750 Euro)sanction | - | N/A |

¹⁹² The figures given here are provided by the CPDP in its written reply, dated on 08.01.2009.

¹⁹³ Annual Report of Commission for Personal Data Protection of the Republic of Bulgaria 2007, p.32, available in Bulgarian at: <http://www.cdpd.bg/godishniotcheti.html> (last accessed on 10.01.2009).

¹⁹⁴ Written reply from CPDP, dated on 08.01.2009.

Annex 2 – Case Law

Please present at least 5 cases on data protection¹⁹⁵ from courts, tribunals, data protection authorities etc. (criteria of choice: publicity, citation in media, citation in commentaries and legal literature, important sanctions) in your country, if available (please state it clearly, if less than 5 cases are available)

| | |
|--|---|
| Case title | Асоциация за европейска интеграция и права на човека срещу Многопрофилна болница за активно лечение – гр. Пловдив Association for European Integration and Human Rights (AEIHR) vs. Multiprofile Hospital for Active Treatment (MHAT)- Plovdiv |
| Decision date | 17.05.2006 |
| Reference details (reference number; type and title of court/body; in original language and English [official translation, if available]) | Decision 6 of the Commission for Personal Data Protection, dated on 17.05.2006, bulletin 3, December 2006, p.2 Решение 6/17.05.2006 на Комисия за защита на личните данни, публикувано в бюлетин 3 от декември 2006 |
| Key facts of the case (max. 500 chars) | The AEIHR was informed by an article in the local newspaper that in the gynaecological examination rooms in the hospital several cameras for video and sound recording were installed. It claimed this violates the Constitution and fundamental human rights of the patients as the records contain sensitive personal data regarding health and sexual life of the patients. The hospital's arguments were that the cameras were installed to ensure the security of the staff, to reply to patients' complaints for non-quality services, to prevent corruptive payments, to register the current of the patients and to protect the information data base. Eight cameras were installed in the whole hospital, four of which in the gynaecological department, two of which – in the examination cabinets. A system administrator to be responsible for the personal data recorded and processed was appointed. |

¹⁹⁵ The cases were selected to best present the case-law of the CPDP. The research did not find any cases that were cited in media or were made public as data protection topic and the activities of the CPDP were not subject to special monitoring or interest in Bulgaria. All cases presented here are available in Bulgarian at: <http://www.cdpd.bg/buletin.html>.

| | |
|--|--|
| Main reasoning/argumentation (max. 500 chars) | The CPDP found that the hospital registered itself as a personal data controller in 2003 but did not notify the CPDP that it would process also sensitive data via video and sound recording in 2006 which violates the PDPA. The hospital's arguments for installation of the cameras regarding prevention of corruption and maintaining labour and financial discipline are not proportional and adequate because these measures violate the fundamental rights of the patients who are examined. The aim is not legitimate and necessary and the means are inproportionate. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | Sensitive data requires special measures for protection, public interest aims should be achieved by means that do not violate personal data protection rights. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | The CPDP issued the following obligatory instruction: <ul style="list-style-type: none"> • within 3 days after the decision is received by the hospital five of the cameras to be removed, two of which in the examination cabinets of the gynaecological ward, • within 14 days after the notification about the decision the hospital to adopt an instruction about the special measures for protection of personal data processed in electronic way, • the hospital to inform the CPDP for each alteration regarding the personal data it processes and keeps. |
| Proposal of key words for data base | Association for European Integration and Human Rights, video, records, hospital, gynaecological, sensitive data, proportionality test |

| | |
|----------------------|--------------------------------|
| Case title | T.Z.I vs. Ministry of Interior |
| Decision date | 05.07.2006 |

| | |
|--|---|
| Reference details (reference number; type and title of court/body; in original language and English [official translation, if available]) | Decision 16 of the Commission for Personal Data Protection, dated on 05.07.2006, bulletin 4, July 2007 Решение 16/05.07.2006 на Комисия за защита на личните данни, публикувано в бюлетин 4 от юли 2007 |
| Key facts of the case (max. 500 chars) | T.Z.I underwent the procedure for police registration after being accused in committing a crime. The prosecutor issued a decision stating the case is minor and the perpetrator's sanction was only administrative. According to the Ministry of Interior Act police registration should be erased in cases like this one. T.Z.I applied for that and the Ministry of Interior (MoI) replied in April 2005 that the registration was erased. T.Z.I applied for a job in November 2006 as an investigator at the Ministry of Interior and thus realised that this is not true. According to the law he is not allowed to work as an investigator if he is registered as perpetrator. |
| Main reasoning/argumentation (max. 500 chars) | The CPDP after performing an investigation found that the personal data and the information about the T.Z.I and his violation were being kept illegally in the MoI database as the criminal investigation was suspended and criminal sanctions had not been imposed. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | Personal data should be processed and kept only for a legitimate purpose and during a legitimate time period. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | The CPDP issued obligatory instruction to the Ministry of Interior to erase all personal data about T.Z.I and information about his violation in their database. |
| Proposal of key words for data base | T.Z.I, legitimate purpose |
| Case title | S.P.A vs. the company – his employer |

| | |
|--|---|
| Decision date | 27.06.2007 |
| Reference details (reference number; type and title of court/body; in original language and English [official translation, if available]) | Decision 27 of the Commission for Personal Data Protection, dated on 27.06.2007, bulletin 6, December 2007, p.33 Решение 27/27.06.2007 на Комисия за защита на личните данни, публикувано в бюлетин 6 от декември 2007 |
| Key facts of the case (max. 500 chars) | S.P.A receives a debit card from a bank in March 2007 for which he did not provide personal data and did not apply. His employer turns out to be the one that applied for the card with the personal data of the complainant. A month earlier he issued himself a card where the employer can transfer his salary. The same bank issued this card. |
| Main reasoning/argumentation (max. 500 chars) | The CPDP found that the employer did not inform the employee that another card was issued with his name and other personal data. The bank also violated the PDPA as it issued the card without asking the person whether he agrees his personal data to be used for that. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | The person whose personal data is being processed has the right to know about the processing and to agree explicitly. The personal data cannot be processed and kept for other than the initial purposes without the consent of the data subject. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | The CPDP issued obligatory instructions: <ul style="list-style-type: none"> • The bank should erase the personal data of S.P.A. and destroy the second card, issued without his consent. • The employer should explicitly negotiate with banks, when opens accounts with personal data on behalf of the employees, about all conditions to protect the data. • The employer should also issue an internal instruction to comply with the Ordinance for the minimal level of organisational and technical measures for personal data protection issued by the CPDP. |
| Proposal of key words for data base | S.P.A., consent of data subject |

| | |
|--|---|
| Case title | P.C vs L.M - former prosecutor |
| Decision date | 20.12.2006 |
| Reference details (reference number; type and title of court/body; in original language and English [official translation, if available]) | Decision 52 of the Commission for Personal Data Protection, dated on 20.12.2006, bulletin 3, May 2007, p. 7 Решение 52/20.12.2006 на Комисия за защита на личните данни, публикувано в бюлетин 3 от май 2007 |
| Key facts of the case (max. 500 chars) | In 1994 P.C. was accused and sentenced to imprisonment and L.M. was the prosecutor in that case. In 2006 P.C already had served the sentence and was released. In 2006 the prosecutor published his book in which the whole criminal proceedings were described using the following personal data of the complainant - the name, workplace, picture, health problems, education, age and the names of her child. L.M. was still working as a regional prosecutor in 2006 and he processed the data as a personal data controller. The personal data in the book was even more that the one processed during the investigation and criminal court proceedings. |
| Main reasoning/argumentation (max. 500 chars) | Personal data processing for literature purposes is allowed if it does not violate the right to personal life and dignity of the data subject even though personal data presented during criminal proceedings is publicly available as the court hearings are public. The data subject's data should be presented in such a way that they cannot be identified. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | Illegal processing of personal data which was processed by a person in relation to his/her legal obligations but used by him/her for another purpose without the consent of the data subjects and without ensuring any protection to them. The balance between right to personal life and the processing of personal data for literature purposes. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | The CDPD issued obligatory instructions: <ul style="list-style-type: none"> • The prosecutor to respect right to personal life when processing personal data in relation to writing books and to make the personal data of P.C. anonymous in the next printings. • The chief prosecutor in Bulgaria to respect the PDPA in the future and to control prosecutors supervised by him to obey PDPA and to not allow illegal processing of personal data. |

| | |
|--|---|
| Proposal of key words for data base | Chief prosecutor, literature, personal data processing for literature purposes, consent of data subject |
|--|---|

| | |
|--|---|
| Case title | M.P vs Multiprofile Hospital for Active Treatment in R. |
| Decision date | 06.04.2005 |
| Reference details (reference number; type and title of court/body; in original language and English [official translation, if available]) | Decision 13 of the Commission for Personal Data Protection, dated on 06.04.2005, bulletin 1, December 2005, p. 7 Решение 13/06.04.2005 на Комисия за защита на личните данни, публикувано в бюлетин 1 от декември 2005 |
| Key facts of the case (max. 500 chars) | M.P applied to receive the full medical file (not only the post-mortem conclusion) about her father's death in the hospital in February 2004. The director of the hospital refused because the personal data can be received only by the data subject, the medical record is subject to medical secret under the Ethic code and the only documents that can be given to relatives are the notification of death and the medical conclusion according to an internal ordinance, adopted in 1999. |
| Main reasoning/argumentation (max. 500 chars) | The CPDP finds the refusal is a violation of PDPA as personal data can be disclosed to third persons when it is regarding the life or health status of another person and the latter is not in a condition to give consent or there are other legal impediments for that. Another violation of the Healthcare Act was found - according to which health status data can be given to third parties when it is needed for identification of a corpse or for investigation of the reasons for the death. |

| | |
|---|--|
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>Access of third parties/persons to personal data is allowed when it is relevant to the death of the data subject.</p> |
| <p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>No sanctions or instructions are published in this decision.</p> |
| <p>Proposal of key words for data base</p> | <p>post-mortem, access of third parties</p> |