

FRA

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

Arne Marjan Mavčič
Matej Avbelj
Ljubljana, Slovenia
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Executive summary

- [1]. The right to protection of personal data is enshrined in Article 38 of the *Ustava Republike Slovenije* [Constitution of the Republic of Slovenia]. The Constitution prohibits the use of personal data contrary to the purpose for which it was collected. Furthermore, the collection, processing, designated use, supervision and protection of the confidentiality of personal data shall be conducted only as provided by the law. Everyone has the right of access to the collected personal data that relates to him and the right to judicial protection in the event of any abuse of such data.¹
- [2]. The field of personal data protection is systematically regulated by the *Zakon o varovanju osebnih podatkov* [Personal Data Protection Act],² which effectively implements all the provisions of Directive 95/46/EC. Other laws that regulate the protection of personal data in more sector specific fields are the *Zakon o elektronskih komunikacijah* [Electronic Communications Act]³, which implements Directive 2002/58/EC, *Zakon o pacientovih pravicah* [Patient's Rights Act]⁴ and the Schengen Convention. Slovenia is also bound by the Regulation (EC) No 45/2001 of the European Parliament and of the Council; by the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data;⁵ by the Convention for the Protection of Human Rights and Fundamental Freedoms,⁶ as well as by the applicable UN instruments, most notably by the International Covenant on Civil and Political Rights.⁷
- [3]. The level of personal data protection in Slovenia appears to be satisfactory. There are no significant debates outlining any major deficiencies. The Slovenian Information Commissioner has been very active and productive and as a result enjoys a strong public support.
- [4]. The data protection authority in Slovenia is the *Informacijski pooblaščenec* [Information Commissioner]. It was established by the *Zakon o informacijskem*

¹ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 38.

² Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007).

³ Slovenia/Electronic Communications Act 43/04 (1.5.2008), Art. 147.

⁴ Slovenia/Patient's Rights Act 15/08 (26.2.2008).

⁵ Slovenia/ Act Ratifying the Convention for the Protection of Individuals with Automatic Processing of Personal Data 3/94 (28.2.1994).

⁶ Slovenia/Act ratifying the Convention on Human Rights and Fundamental Freedoms as amended by Protocols Nos. 3, 5 and 8 and amended by Protocol No. 2 and its Protocols Nos. 1, 4, 6, 7, 9, 10 and 11 7/94 (13.6.1994).

⁷ Slovenia/Act ratifying International Covenant on Civil and Political Rights 7/71 (4.2.1971).

pooblaščenca [Information Commissioner Act]⁸ on December 31, 2005 and commenced its work in 2006. The head of the Information Commissioner (i.e. the Information Commissioner *stricto sensu*) is appointed by *Državni zbor* [National Assembly of the Republic of Slovenia].⁹ This post is currently held by Nataša Pirc Musar. However, the Personal Data Protection Act also provides for the so-called external supervision of the personal data protection, which is exercised by the *Varuh človekovih pravic* [Ombudsman] as well as by a competent working body of the National Assembly.¹⁰

- [5]. According to the Information Commissioner 2007 Annual Report, the number of employees by the end of 2007 rose to 29. The 2007 budget amounted to 1,237,544€ and 99,64% of it was spent.¹¹ The existing resources therefore appear to suffice for the efficient functioning of the Information Commissioner.
- [6]. The powers of the Slovenian Information Commissioner meet the requirements of the Directive 95/46/EC and in particular of its article 28.
- [7]. The Information Commissioner Act defines the Information Commissioner as an independent and autonomous state body. Its independence is guaranteed by way of appointment and dismissal of the Head of the Information Commissioner, by his/her status; by rules regulating incompatibility of his/her function and by the budgetary provisions.
- [8]. The great majority of the initiatives for supervision inspections reaches the Information Commissioner by way of complaints or applications lodged by the affected parties.¹² They are thus the main means of the Information Commissioner's effective monitoring of the protection of personal data. However, the Information Commissioner monitors the application of the Personal Data Protection Act also through the requests for written opinions submitted by public and private bodies regarding specific issues related to personal data protection. As an inspection organ it is also required to follow the actual implementation of the Personal Data Protection Act by itself. It does so through the media reports and, more formally, by co-operation with other bodies involved in personal data protection as well as by official investigative means, in particular by conducting preventive inspections against the public and private bodies bound to adhere to the personal data protection standards. All these figures suggest a high level of pro-activity of the Slovenian Information Commissioner both in the monitoring and in the investigative phase.

⁸ Slovenia/Information Commissioner Act 113/2005 (31.12.2005).

⁹ Slovenia/Information Commissioner Act 113/2005 (31.12.2005), Art. 6.

¹⁰ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 60-61.

¹¹ Information Commissioner Annual Report 2007, at 4, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

¹² Information Commissioner Annual Report 2007, at 23, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008

- [9]. The advisory role of the Information Commissioner occupies an important part of its activities. It takes place in two forms. One is conducted by way of written opinions given upon request by the public and private subjects, whereas the other is exercised in the course of the adoption of legislative and other regulatory acts.
- [10]. The decisions, legal opinions, guidelines, notifications about the requests for constitutionality review by the data protection authority as well as the decisions of the international tribunals are readily and promptly at the disposal of the public on the website of the Information Commissioner via very efficient search engines.
- [11]. The Information Commissioner has invested a lot in various awareness-raising activities. As a result it enjoys a high public trust in the institution of the Information Commissioner.¹³ According to the Slovenian Public Opinion Poll the Information Commissioner is the fourth most trustworthy state institution, trailing only the President of the Republic (55 %), the Euro (53 %) and the Bank of Slovenia. What is more in December 2008, the Information Commissioner was even ranked first.¹⁴
- [12]. The opinions of the Working Party 29 are used (at least) as an important source of persuasive authority.
- [13]. It can be inferred from the annual reports of the Information Commissioner that the data controllers in general comply with their duties under the Personal Data Protection Act. The violations and irregularities that take place are usually a result of inadequate knowledge of the legal requirements stemming from the Act.¹⁵
- [14]. The Slovenian personal data protection legislation does not stipulate any requirements of appointment of data protection officers with a special expertise and special awareness raising role within private and public organisations. However, the Personal Data Protection Act obliges the data controllers to define in their internal acts the persons who are responsible for individual filing systems and who shall, due to the nature of their work, process individual personal data.¹⁶ The competences of the Information Commissioner regarding sanctions, compensations and legal consequences arising from the non-compliance with the rules governing the personal data protection are determined in the Information Commissioner Act, Personal Data Protection Act, *Zakon o inšpekcijskem nadzoru* [Inspection Act],¹⁷ and the *Zakon o prekrških* [Minor

¹³ http://www.cjm.si/sites/cjm.si/files/file/raziskava_pb/PB12_08.pdf, last visited 23.12.2008.

¹⁴ [http://www.ip-rs.si/index.php?id=272&tx_ttnews\[tt_news\]=621](http://www.ip-rs.si/index.php?id=272&tx_ttnews[tt_news]=621), last visited 30.12.2008.

¹⁵ Information Commissioner Annual Report 2007, at 33, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

¹⁶ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art 25/2.

¹⁷ Slovenia/Inspection Act 43/07 (18.5.2007).

Offences Act].¹⁸ This Act furnishes a legal basis following which an individual can appeal to the Information Commissioner when the data controller refuses his/her request for data, extract, list, examination, confirmation, information, explanation, transcript or copy in accordance. If a liable data controller does not comply with the subsequently delivered decision of the Information Commissioner, a responsible official of the data controller can be ordered to pay a fine within the range of 420€-1030€.¹⁹ The Personal Data Protection Act prescribes the sanctions for the so-called general violations of the Act within the range of 4.170€ to 12.510€.²⁰ According to the Minor Offences Act the Information Commissioner can issue warnings for the violations of minor importance or fines in case of more serious, but still minor violations.²¹ However, a more serious abuse of personal data constitutes a criminal offence, defined in Article 143 of the *Kazenski Zakonik* [Penal Code], which is punishable either by a pecuniary sanction or by a prison sentence ranging up to five years.²² Judicial protection of an individual who believes his/her rights regarding personal data protection have been infringed is provided for by the *Upravno sodišče* [Administrative Court].²³ If an individual has suffered damage by the incursion his/her personal data he/she can on the basis of the *Obligacijski Zakonik* [Obligations Code] have recourse to the civil court to stop the harmful conduct and to obtain compensation.²⁴

- [15]. The protection of personal data in the field of employment relations is generally governed by the Personal Data Protection Act and more specifically by Article 46 of the *Zakon o delovnih razmerjih* [Employment Relationship Act].²⁵ *Zakon o evidencah na področju dela in socialne varnosti* [Labour and Social Security Registers Act]²⁶ in Article 13 precisely defines the data that the employers can include in their employees' records. To facilitate the correct processing and protection of personal data in employment relations the Information Commissioner has also issued special guidelines.²⁷ The employers usually implement the statutory requirements of personal data protection through the adoption of more detailed internal company regulations. The Information Commissioner, when explicitly approached regarding this issue, explained that the Personal Data Protection Act in adoption of these internal regulations does

¹⁸ Slovenia/Minor Offences Act 3/07 (12.1.2007).

¹⁹ Slovenia/Information Commissioner Act 113/2005 (31.12.2005), Art 15/3.

²⁰ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 91.

²¹ Slovenia/Minor Offences Act 3/07 (12.1.2007), Art. 4, 53, 57.

²² Slovenia/Penal Code 55/08 (4.6.2008), Art. 143.

²³ Slovenia/Administrative Dispute Act 105/06 (1.1. 2007), Art. 1.

²⁴ Slovenia/Obligations Code 97/07 (24.10.2007).

²⁵ Slovenia/Employment Relationship Act 42/02 (15.05.2002).

²⁶ Slovenia/Labour and Social Security Registers Act 40/06 (14.04.2006), Art. 13.

²⁷ Information Commissioner, Smernice za varstvo osebnih podatkov v delovnih razmerjih, (7.4.2008), available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/smernice/Smernice_za_varstvo_osebnih_podatkov_v_delovnih_razmerjih.pdf, last visited 23.12.2008.

not bind the employers to obtain the consent of trade unions or work council.²⁸ Nevertheless, some Slovenian companies, most notably Lek d.d., do so as an example of good practice.²⁹ However, pursuant to Articles 77 and 80 of the Personal Data Protection Act the employers must consult the representative trade union before introducing video surveillance or employing biometric measures.³⁰

- [16]. The Information Commissioner noted in its 2007 Annual Report that preventive inspections will need to be enhanced, especially in relation to the data controllers that keep more personal data registers or that process sensitive personal data. These include, in particular, the data controllers in the health services, social security, insurance companies as well as all those bodies that employ more people.³¹ It was also reported that both the executive as well as the legislative branch will need to pay more attention to the personal data protection in proposing and adopting new statutes. The field which will certainly need more attention is the protection of personal data in the health sector. The Information Commissioner reports that the number of complaints against the insufficient protection of personal data in this sector is constantly on rise. Also the judicial branch would need to increase the speed of solving the cases and hence contribute to the more efficient protection of personal data in practice. Many of the deficiencies stem from an inadequate implementation rather than insufficient normative framework, which is in general of a very high level. The existing problems should be removed mainly through the increased awareness of the importance and means of personal data protection. Especially on the side of the bigger data controllers, such as health sector, better results could be achieved through the internal re-organization.
- [17]. The Slovenian Information Commissioner operates an extremely functional and always updated website both in Slovenian as well as English. For a couple of years now it has been awarded a special internet prize (*Netko*). Not only is it useful due to its efficient search engines, but also because it provides its potential users with practical advice and tools, such as for example, draft versions of internal acts regulating personal data protection.
- [18]. At the occasion of the European Data Protection Day the Information Commissioner selects a private company or public body, which has been the

²⁸ Opinion of the Information Commissioner, [http://www.ip-rs.si/varstvo-osebni-podatkov/iskalnik-po-odlocbah-in-mnenjih/odlocbe-in-mnenja-varstvo-osebni-podatkov/?tx_jzvopdecisions_pi1\[showUid\]=112&cHash=eab2335332](http://www.ip-rs.si/varstvo-osebni-podatkov/iskalnik-po-odlocbah-in-mnenjih/odlocbe-in-mnenja-varstvo-osebni-podatkov/?tx_jzvopdecisions_pi1[showUid]=112&cHash=eab2335332)

²⁹ www.delavska-participacija.com/clanki/ID070822.doc, last visited 23.12.2008.

³⁰ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 77/5, 80/3.

³¹ Information Commissioner Annual Report 2007, at 51, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

most successful at personal data protection. It is awarded "a good practice" prize and recommended as a role model in the field.³²

- [19]. The right of the Information Commissioner to initiate before the Constitutional Court a review of constitutionality or legality of the legal acts if such questions arise in connection with a procedure he/she is conducting³³ can be quoted as an example of good practice, which has already resulted, as noted in the review of cases below, in some successful constitutional challenges.

³² <http://www.lek.si/slo/mediji/sporocila-za-javnost/3849/> and <http://www.ip-rs.si/novice/detajl/nagrajenca-ob-2-evropskem-dnevu-varstva-osebni-podatkov-sta-zavod-za-zdravstveno-zavarovanje-slove/>, last visited 30.12.2008.

³³ Slovenia/Constitutional Court Act 64/07 (16.7.2007), Art. 23a.

1. Overview

- [20]. The right to protection of personal data is enshrined in the Article 38 of the *Ustava Republike Slovenije* [Constitution of the Republic of Slovenia]. The Constitution prohibits the use of personal data contrary to the purpose for which it was collected. Furthermore, the collection, processing, designated use, supervision and protection of the confidentiality of personal data shall be conducted only as provided by the law. Everyone has the right of access to the collected personal data that relates to him and the right to judicial protection in the event of any abuse of such data.³⁴
- [21]. This provision was, as reported by the Information Commissioner, implemented by the legislator in the form of the so-called "processing model" as opposed to the "model of misuse". In accordance with this model, everything in the field of personal data processing, except that which the law explicitly allows - and in the private sector that which may be also mandated through the provision of explicit consent by the individual - is prohibited. Only those elements and aspects of personal data that are appropriate and strictly necessary to realize certain specific legally defined and constitutionally admissible functions and purposes may be processed.³⁵
- [22]. The field of personal data protection is systematically regulated by the *Zakon o varovanju osebnih podatkov* [Personal Data Protection Act],³⁶ which effectively implements all the provisions of the Directive 95/46/EC. The Act was importantly amended in July 2007 by alleviating the financial burden of the data controllers; facilitating the access of the individuals to their personal data and finally by narrowing the subjects liable to administer personal data in special registers, limiting it only to those who have 50 or more employees.
- [23]. Other laws that regulate the protection of personal data in more sector specific fields are the *Zakon o elektronskih komunikacijah* [Electronic Communications Act]³⁷, which implements the Directive 2002/58/EC, *Zakon o pacientovih pravicah* [Patient's Rights Act]³⁸ and the Schengen Convention. Slovenia is also bound by the Regulation (EC) No 45/2001 of the European Parliament and of the Council; by the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data; by the European Convention on Human Rights, as well as by the applicable UN

³⁴ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 38.

³⁵ Information Commissioner Annual Report 2007, at 21, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

³⁶ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007).

³⁷ Slovenia/Electronic Communications Act 43/04 (1.5.2008), Art. 147.

³⁸ Slovenia/Patient's Rights Act 15/08 (26.2.2008).

instruments, most notably by the International Covenant on Civil and Political Rights.

- [24]. It is reported that regarding the amendments to the Personal Data Protection Act, the Information Commissioner opined that the pre-existing obligations of data controllers did not represent unnecessary administrative hurdles and expressed grave concerns that any narrowing of the obligations of personal data controllers would be reflected in an intrusion into the privacy of individuals.³⁹ The amendment was nevertheless approved.
- [25]. However, in general the level of personal data protection in Slovenia appears to be satisfactory. There are no significant debates outlining any major deficiencies. To the contrary and as will be presented below, the Slovenian Information Commissioner has been very active and productive and as a result enjoys a strong public support.

³⁹ Information Commissioner Annual Report 2007, at 22, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

2. Data Protection Authority

- [26]. The data protection authority in Slovenia is the *Informacijski pooblaščenec* [Information Commissioner]. It was established by the *Zakon o informacijskem pooblaščenecu* [Information Commissioner Act]⁴⁰ on December 31, 2005 and commenced its work in 2006. Before the enactment of the current Personal Data Protection Act the competence for the protection of personal data was entrusted to the Inspectorate for the protection of personal data as a first-instance organ within the Ministry of Justice that acted as an appellate body.⁴¹
- [27]. The head of the Information Commissioner (i.e. the Information Commissioner *stricto sensu*) is appointed by *Državni zbor* [National Assembly of the Republic of Slovenia].⁴² This post is currently held by Nataša Pirc Musar. However, the Personal Data Protection Act also provides for the so-called external supervision of the personal data protection, which is exercised by the *Varuh človekovih pravic* [Ombudsman] as well as by a competent working body of the National Assembly.⁴³
- [28]. The internal organization of the Information Commissioner is determined by the *Akt o notranji organizaciji in sistematizaciji delovnih mest pri informacijskem pooblaščenecu* [Regulations on cadre, posts and professional titles at the Information Commissioner].⁴⁴ It is composed of four organisational units: the secretariat, public information department, personal data protection department, administrative and technical Department.
- [29]. According to the Information Commissioner 2007 Annual Report, the number of employees by the end of 2007 rose to 29. All employees have university degrees, four have a masters degree and one has a doctorate.⁴⁵ The 2007 budget amounted to 1,237,544€⁴⁶ and 99,64% of it was spent.⁴⁷ The existing resources therefore appear to suffice for the efficient functioning of the Information Commissioner. There have been no reports to the contrary. The same can be

⁴⁰ Slovenia/Information Commissioner Act 113/2005 (31.12.2005).

⁴¹ <http://www.ip-rs.si/o-pooblascencu/zgodovina/zgodovina-pooblascenca/>, last visited 30.12.2008.

⁴² Slovenia/Information Commissioner Act 113/2005 (31.12.2005), Art. 6.

⁴³ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 60-61.

⁴⁴ Slovenia/ Regulations on cadre, posts and professional titles at the Information Commissioner, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/interno/akt_o_notranji_org_in_delov_mestih.1.8.08.pdf, last visited 22.12. 2008.

⁴⁵ Information Commissioner Annual Report 2007, at 3, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

⁴⁶ Information Commissioner Annual Report 2007, at 3, at 4, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

⁴⁷ Information Commissioner Annual Report 2007, at 4, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

inferred from the number of employees. As with the new competences added new needs arose, additional civil servants have been employed.⁴⁸

2.1. Powers and their Conformity with the Directive 95/46/EC

- [30]. The powers of the Information Commissioner are determined in a number of legislative acts and fall into two groups. The *Zakon o dostopu do informacij javnega značaja* [Act on the Access to Information of Public Character]⁴⁹ and the *Zakon o medijih* [Media Act]⁵⁰ furnish a legal basis for ensuring the right to access to the information of public character. The most important legal basis for the personal data protection is the Personal Data Protection Act.⁵¹ It establishes a supervisory body for personal data protection – the Information Commissioner.⁵²
- [31]. The Information Commissioner is generally obliged to ensure uniform application of measures in the area of protection of personal data and to undertake any other tasks prescribed by the law.⁵³ A comprehensive overview of its powers, which has been intelligibly broken down into 24 points in the publication of the Information Commissioner,⁵⁴ encompasses the following competences:
- a. performing supervision over the implementation of the provisions of Personal Data Protection Act.⁵⁵ This is conducted

⁴⁸ Information Commissioner Annual Report 2007, at 3, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12.2008.

⁴⁹ Slovenia/Act on the Access to Information of Public Character 51/06, (18.5.2006).

⁵⁰ Slovenia/Media Act 110/06 (29.9.2006).

⁵¹ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007).

⁵² Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 37/1.

⁵³ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 37/2.

⁵⁴ Competences of the Information Commissioner, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/brosure/zlozenka_pristojnosti_ang2.pdf, last visited 22.12.2008.

⁵⁵ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 49/1. Within the framework of inspection supervision the Information Commissioner supervises: (1.) the lawfulness of processing of personal data; (2.) the suitability of measures for security of personal data and the implementation of procedures and measures for security of personal data pursuant to this Act; (3.) the implementation of the provisions of the statute regulating the filing system catalogue, the Register of Filing Systems and the recording of the supply of personal data to individual data recipients, (4.) the implementation of the statutory provisions regarding the transfer of personal data to third countries and on the supply thereof to foreign data recipients. Pursuant to Art. 52 the inspection supervision shall be performed directly by Supervisors within the limits of competence of the Information Commissioner. In performing inspection supervision, the Supervisor shall be entitled: (1.) to examine documentation relating to the processing of personal data, irrespective of their confidentiality or secrecy; (2.) to examine the transfer of personal data to third countries and the supply to foreign data

by the national supervisors for personal data protection employed at the Information Commissioner.⁵⁶

- b. ordering supervision measures when established that the data has not been processed according to the law;⁵⁷
- c. issuing other supervision measures in accordance with the Act governing inspection supervisions and the Act governing general administrative procedures;⁵⁸
- d. performing preventive supervision with personal data controllers in public and private sectors;⁵⁹
- e. managing and maintaining the register of personal databases, ensuring its updating and public internet access;⁶⁰
- f. ensuring viewing and transcription of data from the database register (as a rule within the same day or within eight days at the latest).⁶¹
- g. performing procedures with regard to violations in the field of personal data protection (expedient procedure).

recipients; (3.) to examine the contents of filing systems, irrespective of their confidentiality or secrecy, and filing system catalogues; (4.) to examine documentation and acts regulating the security of personal data; (5.) to examine the premises in which personal data are processed, computer and other equipment, and technical documentation; (6.) to verify measures and procedures to secure personal data, and the implementation thereof; (7.) to exercise other competences provided by the statute regulating inspection supervision and the statute regulating the general administrative procedure; (8.) to perform other matters provided by statute. Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 53.

⁵⁶ Slovenia/Information Commissioner Act 113/2005 (31.12.2005), Art. 8.

⁵⁷ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 54/1. The Supervisor who in performing inspection supervision detects a violation of this Act or of another statute or regulation regulating protection of personal data has the right immediately: (1.) to order the elimination of irregularities or deficiencies he detects in the manner and within the interval he himself defines; (2.) to order the prohibition of processing of personal data by persons in the public or private sector who have failed to ensure or failed to implement measures and procedures to secure personal data; (3.) to order the prohibition of processing of personal data and the anonymising, blocking, erasure or destruction of personal data whenever he concludes that the personal data are being processed in contravention of the statutory provisions; (4.) to order the prohibition of the transfer of personal data to third countries, or their supply to foreign data recipients, if they are transferred or supplied in contravention of the statutory provisions or binding international treaty; (4.) to order other measures provided by the statute regulating inspection supervision and the statute regulating the general administrative procedure.⁵⁷

⁵⁸ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 54/1/5.

⁵⁹ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 51.

⁶⁰ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 28.

⁶¹ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 29.

- h. filing a criminal notification or performing procedures in accordance with the Act governing violations if a suspicion of criminal offence or violation arises during inspection;⁶²
- i. judging on complaints of individuals related to processing of personal data;⁶³
- j. issuing decisions on ensuring an adequate level of personal data protection in third countries;⁶⁴
- k. performing procedures for assessing the adequate level of personal data protection in third countries based on findings of supervisions and other information;⁶⁵
- l. managing the list of third countries with partially or entirely adequate or inadequate personal data protection levels;⁶⁶
- m. managing administrative procedures for issuing permissions for transferring personal data to a third country;⁶⁷
- n. managing administrative procedures for issuing permissions to link public records and registers in cases when a personal database contains sensitive personal data or when such linking requires the use of unique connecting code (such as EMŠO – the standardized personal registration number or tax number);⁶⁸
- o. managing administrative procedures for issuing declaratory decisions on whether the implementation of biometric measures in private sector is in agreement with the provisions of this Act;⁶⁹
- p. co-operating with government bodies, competent EU bodies for the protection of individuals in matters related to processing personal data, international organizations, foreign personal data protection bodies, institutions, associations, and other bodies and organizations dealing with questions of personal data protection;⁷⁰

⁶² Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 54/3.

⁶³ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 9/4 and 10/3.

⁶⁴ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 63.

⁶⁵ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 64.

⁶⁶ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 66.

⁶⁷ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 70.

⁶⁸ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 26.

⁶⁹ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 80.

⁷⁰ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 47.

- q. issuing and publishing preliminary opinions to state bodies and public powers holders on the alignment of the provisions of regulations with legislation governing personal data;⁷¹
- r. issuing and publishing non-obligatory opinions on the conformity of professional ethics codes, general conditions of business practices or the proposals thereof, with regulations in the field of personal data protection;⁷²
- s. preparing, issuing and publishing non-obligatory recommendations and instructions with regard to personal data protection in a particular field;⁷³
- t. using a website and other means of informing the public on preliminary opinions on compliance of proposals of acts with the law and other regulations in the field of personal data protection, issuing internal bulletin and expert publications, publishing decisions and court resolutions related to personal data protection, as well as non-obligatory opinions, explanations, positions and recommendations with regard to personal data protection;⁷⁴
- u. issuing press releases on performed supervisions and preparing annual reports on the activities of the Commissioner in the current year;⁷⁵
- v. being an appellate body, the Information Commissioner is authorised for supervising the implementation of Information Commissioner Act, Access to Public Information Act within the framework of its appellate proceedings and Personal Data Protection Act;⁷⁶
- w. deciding on the appeals of individuals when a data controller refuses their request for obtaining data, extracts, lists, examinations, certificates, information, explanations, transcripts or copies in accordance with the provisions of the Act governing personal data protection (competency established by the Information Commissioner Act);

⁷¹ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 48.

⁷² Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 49/6.

⁷³ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 49/7 and 8.

⁷⁴ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 49/2-3.

⁷⁵ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 49/1.

⁷⁶ Slovenia/Information Commissioner Act 113/2005 (31.12.2005), Art. 2.

- x. participating in three working groups for personal data protection, formed within the framework of the EU and bringing together independent bodies for the protection of personal data in member states, and performing their duties based on Directive 95/46/EC (Working party 29, group dealing with processing of personal data in Europol and Eurojust).

- [32]. Furthermore, the Information Commissioner acts as an independent supervisory authority for the regulation of personal data transfer in accordance with the Article 128 of the Schengen Agreement.⁷⁷ Pursuant to the Electronic Communications Act it is authorized to supervise the safekeeping of traffic and locational data obtained or processed in relation to the provision of public telecommunications networks and services;⁷⁸ and to supervise the misdemeanours in the provision of public telecommunications networks and services.⁷⁹
- [33]. The Information Commissioner is also competent under the Act on Patient's Rights (1.) to decide in appellate proceeding on appeals filed by patients and other eligible persons against infringement of the provisions regulating the procedure of access to medical files;⁸⁰ (2.) to decide in appellate proceeding on appeals against partial or complete refusal of request for access to medical files after patients death which have been filed by eligible persons;⁸¹ (3.) to decide on appeals filed by eligible persons against partial or complete refusal of request for access relating to the duty of protection of information on patient's health status when these Data Protection Authority information originate from medical files.⁸²
- [34]. The supervisor of inspections as well as all the civil servants employed with the Information Commissioner are obliged to protect the secrecy of personal data they encounter in performing inspection supervision or during their work.⁸³ The Information Commissioner is obliged to notify complainant of all important conclusions and actions in the procedure of inspection supervision.⁸⁴
- [35]. There is no appeal against a decision or ruling of the Supervisor, but the aggrieved party has the right to begin an administrative dispute by lodging a complaint to the Administrative court.⁸⁵ The Information Commissioner can also lodge to the Constitutional Court a request for constitutional review of a

⁷⁷ Information Commissioner Annual Report 2007, at 2, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

⁷⁸ Slovenia/Electronic Communications Act 43/04 (1.5.2008), Art. 112/2.

⁷⁹ Slovenia/Electronic Communications Act 43/04 (1.5.2008), Art. 147.

⁸⁰ Slovenia/Patient's Rights Act 15/08 (26.2.2008), Art. 41/10.

⁸¹ Slovenia/Patient's Rights Act 15/08 (26.2.2008), Art. 42/5.

⁸² Slovenia/Patient's Rights Act 15/08 (26.2.2008), Art. 45/7.

⁸³ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 53.

⁸⁴ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 56.

⁸⁵ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 55.

statute, other regulations and general acts adopted to perform public powers in case of questions of constitutionality and legality in connection with a procedure being dealt with.⁸⁶

- [36]. It follows from this comprehensive review of the Information Commissioner's powers that at its remit is very broad and that its powers fully comply with the requirements of the Directive 95/46/EC and in particular with its article 28. This has been also confirmed by the Information Commissioner in its report to the EU Commission.⁸⁷

2.2. Sufficiency of Resources

- [37]. The 2007 budget amounted to 1,237,544€⁸⁸ and 99,64% of it was spent.⁸⁹ The existing resources therefore appear to suffice for the efficient functioning of the Information Commissioner. There have been no reports to the contrary. The same can be inferred from the number of employees. As with the new competences added new needs arose, additional civil servants have been employed.⁹⁰

2.3. Independence

- [38]. The Information Commissioner Act defines the Information Commissioner as an independent and autonomous state body. Its independence is guaranteed by way of appointment and dismissal of the Head of the Information Commissioner, by his/her status; by rules regulating incompatibility of his/her function and by the budgetary provisions.
- [39]. He/she is appointed by the National Assembly of the Republic of Slovenia on the proposal of the president of the Republic of Slovenia for a period of five

⁸⁶ Slovenia/Constitutional Court Act 64/07 (16.7.2007), Art. 23a.; also Decision of the Constitutional Court of Republic of Slovenia No. U-I-237/07 (12.6.2008), available at: <http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/629922F942D6365FC12574710044A958>, last visited 12.01.2009.

⁸⁷ National Report of the Information Commissioner of the Republic of Slovenia to the European Commission for the Year 2006, available at: http://www.ip-rs.si/fileadmin/user_upload/doc/Letno_poro_ilo_ZVOP_za_WP_29_2006_ANG.doc, last visited 30.12.2008.

⁸⁸ Information Commissioner Annual Report 2007, at 3, at 4, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

⁸⁹ Information Commissioner Annual Report 2007, at 4, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

⁹⁰ Information Commissioner Annual Report 2007, at 3, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

years, which is renewable once.⁹¹ He/she must be a citizen of the Republic of Slovenia who holds a university degree, has at least five years of working experience and must not have been convicted by a final decision for a criminal offence punishable by an unconditional punishment of deprivation of liberty.⁹²

- [40]. The Information Commissioner has the status of an officer of a state. He/she may be subject to early dismissal by the National Assembly of the Republic of Slovenia only if: he/she himself so demands; if he/she no longer fulfils the conditions for execution of the function determined in the Article 6(2) of the Information Commissioner Act; if he/she becomes permanently incapable of performing his/her function; if he/she neglects to execute his powers in accordance with the Law and Constitution. The procedure for the dismissal of the Information Commissioner commences on the proposal of the president of the Republic of Slovenia. With regard to incompatibility of the Information Commissioner's function with other functions and activities the *Zakon o varuhu človekovih pravic* [Human Rights Ombudsman Act]⁹³ applies by analogy.⁹⁴
- [41]. The funds for Information Commissioner's operation are provided from the Budget of the Republic of Slovenia and are determined by the National Assembly on the proposal of the Information Commissioner.⁹⁵

2.4. Investigation on its own Initiative and a Monitoring Role

- [42]. The powers of the Information Commissioner to begin and carry out the supervision inspections in the protection of personal data are governed by the *Zakon o inšpekcijskem nadzoru* [Inspection Act]⁹⁶ unless provided differently in the Personal Data Protection Act.⁹⁷ Pursuant to the Inspection Act the rule is that an inspection starts *ex officio*, i.e. on the supervisor's own motion. While the other organs and private parties are entitled to notify the supervisor about the alleged breaches of the law, they do not have the right to demand the initiation of the inspection. The final decision on that lies with the supervisor, who must scrutinize the complaints and inform the complainants about the steps

⁹¹ Slovenia/Information Commissioner Act 113/2005 (31.12.2005), Art 6.

⁹² Slovenia/Information Commissioner Act 113/2005 (31.12.2005), Art 6.

⁹³ Slovenia/Human Rights Ombudsman Act 71/93 (14.01.1994).

⁹⁴ Slovenia/Information Commissioner Act 113/2005 (31.12.2005), Art 7.

⁹⁵ Slovenia/ Information Commissioner Act 113/2005 (31.12.2005), Art 5.

⁹⁶ Slovenia/Inspection Act 43/07 (18.5.2007).

⁹⁷ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 50.

taken, but is eventually autonomous in deciding whether to launch an inspection or not.⁹⁸

- [43]. In 2007 the Information Commissioner *ex officio* initiated 40 procedures against the public sector and 31 against the private sector entities. This means that one fifth of all supervision inspections were started on the Information Commissioner's own initiative.⁹⁹ Even though this figure is not so high, it can not be interpreted as evidence that the Information Commissioner is not proactive. To the contrary, read in a conjunction with a relatively big number of cases it must handle on a yearly basis, the Information Commissioner's *ex officio* activity in 20% cases proves its considerable engagement.
- [44]. The great majority of the initiatives for supervision inspections, however, reaches the Information Commissioner by way of complaints or applications lodged by the affected parties. They are thus the main means of the Information Commissioner's effective monitoring of the protection of personal data. The number of the affected parties' complaints, both from the public as well as from the private sector, has constantly been on rise. While in 2006 there were 231 complaints (88 from the members of the public and 143 from the members of the private sector),¹⁰⁰ in 2007 their number rose to 406.¹⁰¹
- [45]. Moreover, besides these complaints potentially giving rise to the inspection procedures, the Information Commissioner monitors the application of the Personal Data Protection Act through the request for written opinions submitted by public and private bodies regarding specific issues related to personal data protection. The number of this kind of requests has been growing as well. In 2006 the Information Commissioner received 616 requests, compared to only 34 in 2005,¹⁰² whereas in 2007 their number almost doubled to 1144.¹⁰³
- [46]. Naturally, the Information Commissioner as an inspection organ is also required to follow the actual implementation of the Personal Data Protection Act by itself. It does so through the media reports and, more formally, by co-operation with other bodies involved in personal data protection¹⁰⁴ as well as by official investigative means, in particular by conducting preventive inspections against

⁹⁸ Slovenia/Inspection Act 43/07 (18.5.2007), Art. 50, read together with the decision of the Slovenian Constitutional Court Up-3/97 (15.7. 1999), available at: <http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/6E4E46AB9A4AE345C1257172002A2B42>.

⁹⁹ Information Commissioner Annual Report 2007, at 23, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008

¹⁰⁰ Information Commissioner Annual Report 2006, at 23, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/annualReport.pdf, last visited 22.12.2008.

¹⁰¹ Information Commissioner Annual Report 2007, at 23, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008

¹⁰² Information Commissioner Annual Report 2006, at 30, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/annualReport.pdf, last visited 22.12.2008.

¹⁰³ Information Commissioner Annual Report 2007, at 28, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008

¹⁰⁴ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 47.

the public and private bodies bound to adhere to the personal data protection standards.¹⁰⁵

- [47]. All these figures suggest a high level of pro-activity of the Slovenian Information Commissioner both in the monitoring and in the investigative phase.

2.5. Availability of Decisions of Data Protection Authority

- [48]. The decisions, legal opinions, guidelines, notifications about the requests for constitutionality review by the data protection authority as well as the decisions of the international tribunals are readily and promptly at the disposal of the public on the website of the Information Commissioner via very efficient search engines.¹⁰⁶

2.6. Status of the Working Party 29 Opinions

- [49]. The Opinions of the Working Party established under Article 29 of Directive 95/46 EC have been most frequently used in the field of protection of biometric personal data and transfer of data to the third states. The search engine on the Information Commissioner website finds 13 cases in which either the parties concerned or the Information Commissioner referred to the opinions of the Working Party.¹⁰⁷ It appears that these are used (at least) as an important source of persuasive authority.

2.7. Advisory and Awareness Raising Role

- [50]. The advisory role of the Information Commissioner occupies an important part in its activities. It takes place in two forms. The one described above is

¹⁰⁵ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 51.

¹⁰⁶ <http://www.ip-rs.si/varstvo-osebni-podatkov/iskalnik-po-odlocbah-in-mnenjih/>, last visited 22.12. 2008.

¹⁰⁷ <http://www.ip-rs.si/nc/varstvo-osebni-podatkov/iskalnik-po-odlocbah-in-mnenjih/odlocbe-in-mnenja-varstvo-osebni-podatkov/>, last visited 22.12.2008.

conducted by way of written opinions given upon request by the public and private subjects.¹⁰⁸ As indicated, it has constantly been on rise. The other is exercised in the course of adoption of legislative and other regulatory acts. The Personal Data Protection Act authorizes the Information Commissioner to issue prior opinions to the Ministries, the National Assembly, self-governing local community bodies, other state bodies and holders of public powers regarding the compliance of the provisions of draft statutes and other regulations with the statutes and other regulations regulating personal data.¹⁰⁹ It is reported that in 2007 the Information Commissioner participated in the preparation of 63 acts and other legislative regulations,¹¹⁰ whereas in 2006 it took part in the preparation of 20 statutes.¹¹¹

[51]. The Information Commissioner has been particularly active in regard to awareness raising. A groundbreaking year was 2006, when the Information Commissioner organized three press conferences, published eight publications, upgraded its website and engaged into education of various target groups which are in their spheres of activity directly affected by the issues raised by the Personal Data Protection Act. The Head and the other employees at the Information Commissioner also took part in a number of seminars and conferences in Slovenia and abroad.¹¹²

[52]. The awareness raising activity was, however, strengthened further in 2007. The Information Commissioner established close contacts with the media, its website was additionally upgraded and won a special internet award both in 2007 as well as in 2008. The previous educational activities, conferences and symposia continued. It is particularly important to mention an event at the occasion of the first European Personal Data Protection Day, featuring lawyers, experts from a variety of fields and well known personalities, where good practices in the field of personal data protection were recognized and prizes were awarded to deserving public and private entities. An important event, hosted by Slovenia in 2008, was also the third European Conference of Information Commissioners from 13 European countries which have a similar institution. Additionally, in 2007 five more publications were issued.¹¹³ The result of all these awareness-raising activities and proactive work of the Information Commissioner in general is a high public trust in the institution of the Information Commissioner.¹¹⁴

¹⁰⁸ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 49/6-8.

¹⁰⁹ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 48.

¹¹⁰ Information Commissioner Annual Report 2007, at 41, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12.2008

¹¹¹ Information Commissioner Annual Report 2006, at 41, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/annualReport.pdf, last visited 22.12.2008.

¹¹² Information Commissioner Annual Report 2006, at 41, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/annualReport.pdf, last visited 22.12.2008.

¹¹³ Information Commissioner Annual Report 2007, at 41, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12.2008.

¹¹⁴ http://www.cjm.si/sites/cjm.si/files/file/raziskava_pb/PB12_08.pdf, last visited 23.12.2008.

3. Compliance

- [53]. Personal data may be, in principle, processed only if provided so by statute or on the basis of the consent of an individual.¹¹⁵ However, if this is necessary to protect the life or body of an individual the personal data may be processed even in the absence of any statutory legal grounds.¹¹⁶ The purpose of processing personal data must be provided by statute, and in cases of processing on the basis of personal consent of the individual, the individual must be informed in advance in writing or in another appropriate manner of the purpose of processing of personal data.¹¹⁷ Personal data may only be collected for specific and lawful purposes, and may not be further processed in such a manner that their processing would be counter to these purposes, unless otherwise provided by statute.¹¹⁸ Personal data may only be stored for as long as necessary to achieve the purpose for which they were collected or further processed. On completion of the purpose of processing, personal data shall be erased, destroyed, blocked or anonymised, unless pursuant to the statute governing archive materials and archives they are defined as archive material, or unless a statute otherwise provides for an individual type of personal data.¹¹⁹
- [54]. Personal data being processed must be accurate and kept up to date. Data controller may prior to input into a filing system verify the accuracy of personal data by examining an identity document or other suitable public document of the individual to whom the data relate.¹²⁰
- [55]. If personal data are collected directly from the individual to whom they relate, the data controller or his representative must communicate to the individual the data on the data controller and its possible representative (personal name, title or official name respectively and address or seat respectively) and the purpose of the processing of personal data.¹²¹ Data controllers are also obliged to supply against payment of the cost of supply personal data to data recipients.¹²²
- [56]. The data controllers and data processors must ensure the protection of personal data.¹²³ Security of personal data comprises organisational, technical and logical-technical procedures and measures to protect personal data, and to prevent accidental or deliberate unauthorised destruction, modification or loss

¹¹⁵ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 8/1.

¹¹⁶ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 12.

¹¹⁷ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 8/2.

¹¹⁸ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 16.

¹¹⁹ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 21.

¹²⁰ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 18.

¹²¹ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 19.

¹²² Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 22.

¹²³ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 25.

of data, and unauthorised processing of such data.¹²⁴ Data controllers must prescribe in their internal acts the procedures and measures for security of personal data and shall define the persons responsible for individual filing systems and the persons who, due to the nature of their work, shall process individual personal data.¹²⁵

- [57]. Data controllers must establish for each filing system a filing system catalogue¹²⁶ and communicate the data as prescribed by the Personal Data Protection Act to the Information Commissioner at least 15 days prior to the establishing of a filing system or prior to the entry of a new type of personal data. Any modifications of the collected data must be communicated no later than eight days from the date of modification.¹²⁷
- [58]. A filing system must contain the following data: (1.) title of the filing system; (2.) data on the data controller (for natural person: personal name, address where activities are performed or address of permanent or temporary residence, and for sole trader his official name, registered office, seat and registration number; for legal person: title or registered office and address or seat of the data controller and registration number); (3.) legal basis for processing personal data; (4.) the category of individuals to whom the personal data relate; (5.) the type of personal data in the filing system; (6.) purpose of processing; (7.) duration of storage of personal data; (8.) restrictions on the rights of individuals with regard to personal data in the filing system and the legal basis for such restrictions; (9.) data recipients or categories of data recipients of personal data contained in the filing system; (10.) whether the personal data are transferred to a third country, to where, to whom and the legal grounds for such transfer; (11.) a general description of security of personal data; (12.) data on connected filing systems from official records and public books; (13.) data on the representative. Data controller must ensure that the contents of the catalogue are accurate and up to date.¹²⁸
- [59]. Sensitive personal data may only be processed in the following cases: (1.) if the individual has given explicit personal consent for this, such consent as a rule being in writing, and in the public sector provided by statute; (2.) if the processing is necessary in order to fulfil the obligations and special rights of a data controller in the area of employment in accordance with statute, which also provides appropriate guarantees for the rights of the individual; (3.) if the processing is necessarily required to protect the life or body of an individual to whom the personal data relate, or of another person, where the individual to whom the personal data relate is physically or contractually incapable of giving his consent pursuant to subparagraph 1 of this Article; (4.) if they are processed for the purposes of lawful activities by institutions, societies, associations,

¹²⁴ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 24.

¹²⁵ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 25/2.

¹²⁶ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 26.

¹²⁷ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 27.

¹²⁸ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 26.

religious communities, trade unions or other non-profit organisations with political, philosophical, religious or trade-union aim, but only if the processing concerns their members or individuals in regular contact with them in connection with such aims, and if they do not supply such data to other individuals or persons of public or private sector without the written consent of the individual to whom they relate; (5.) if the individual to whom the sensitive personal data relate publicly announces them without any evident or explicit purpose of restricting their use; (6.) if they are processed by health-care workers and health-care staff in compliance with statute for the purposes of protecting the health of the public and individuals and the management or operation of health services; (7.) if this is necessary in order to assert or oppose a legal claim; (8.) if so provided by another statute in order to implement the public interest.¹²⁹ Sensitive personal data must be during processing specially marked and protected, so that access to them by unauthorised persons is prevented.¹³⁰

- [60]. It can be inferred from the annual reports of the Information Commissioner that the data controllers in general comply with their duties under the Personal Data Protection Act. The violations and irregularities that take place are usually a result of inadequate knowledge of the legal requirements stemming from the Act. However, as noted by the Information Commissioner, the evidence shows that the data controllers are becoming increasingly aware of the importance of personal data protection. There has been an increase in the number of applications regarding suspected misuse of personal data, requests for opinions, clarifications and views with regard to specific issues that are raised during the course of their work and submitted to the supervisory authority.¹³¹
- [61]. According to the Slovenian personal data protection legislation there are no requirements of appointment of data protection officers with a special expertise and special awareness raising role within private and public organisations. However, the Personal Data Protection Act obliges the data controllers to define in their internal acts the persons who are responsible for individual filing systems and who shall, due to the nature of their work, process individual personal data.¹³² In so doing, it does not stipulate any requirements regarding the actual appointment of the persons who are responsible for individual filing systems.

¹²⁹ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art 13.

¹³⁰ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 14.

¹³¹ Information Commissioner Annual Report 2007, at 33, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

¹³² Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art 25/2.

4. Sanctions, Compensation and Legal Consequences

4.1. Legal Bases

- [62]. The competences of the Information Commissioner regarding sanctions, compensations and legal consequences arising from the non-compliance with the rules governing the personal data protection are determined in the Information Commissioner Act, Personal Data Protection Act, the Inspection Act, and the *Zakon o prekrških* [Minor Offences Act].¹³³
- [63]. The Information Commissioner Act furnishes a legal basis following which an individual can appeal to the Information Commissioner when the data controller refuses his/her request for data, extract, list, examination, confirmation, information, explanation, transcript or copy in accordance.¹³⁴ If a liable data controller does not comply with the subsequently delivered decision of the Information Commissioner, a responsible official of the data controller can be ordered to pay a fine within the range of 420€-1030€.¹³⁵
- [64]. The Personal Data Protection Act prescribes the sanctions for the so-called general violations of the Act. A fine within the range of 4.170€ to 12.510€ can be imposed for a minor offence on a legal person, sole trader or individual independently performing an activity: (1.) if he processes personal data without having the statutory grounds or personal consent of the individual to so do; (2.) if he entrusts an individual task relating to the processing of personal data to another person without concluding a contract in accordance with the second paragraph of Article 11; (3.) if he processes sensitive personal data in contravention of Articles 13 or does not protect them in accordance with Article 14; (4.) if he automatically processes personal data in contravention of Article 15; (5.) if he collects personal data for purposes that are not defined and lawful, or if he continues to process them in contravention of Article 16; (6.) if he supplies to a data recipient personal data in contravention of the second paragraph of Article 17 or if he does not destroy personal data in accordance with the third paragraph of Article 17 or does not publish the results of processing in accordance with the fourth paragraph of Article 17; (7.) if he does not inform the individual of the processing of personal data in accordance with

¹³³ Slovenia/Minor Offences Act 3/07 (12.1.2007).

¹³⁴ Slovenia/Information Commissioner Act 113/2005 (31.12.2005), Art 2/1(3)

¹³⁵ Slovenia/Information Commissioner Act 113/2005 (31.12.2005), Art 15/3.

Article 19; (8.) if he uses the same linking code in contravention of Article 20; (9.) if he does not delete, destroy, block or anonymise personal data after the purpose for which they were processed has been achieved in accordance with the second paragraph of Article 21; (10.) if he acts in contravention of Article 22; (11.) if he fails to ensure that the filing system catalogue contains data provided by statute (Article 26); (12.) if he fails to supply data for the needs of the Register of Filing Systems (Article 27); (13.) if he acts in contravention of the first or second paragraphs of Article 30 or the second, third or fifth paragraphs of Article 31; (14.) if he acts in contravention of Article 32 or the second or fifth paragraphs of Article 33; (15.) if he acts in contravention of the first paragraph of Article 63 or in contravention of Article 70 transfers personal data to a third country. In all these cases the responsible person of the legal person, sole trader or individual independently performing an activity as well the responsible person of a state body or body of self-governing local community can be fined from 830€ to 2.080€. Finally, a fine from 200€ to 830€ can be imposed on an individual who commits the act described above.¹³⁶

- [65]. In the same way and the same fines can be imposed for a violation of the provisions on contractual processing;¹³⁷ for a violation of the provisions on security of personal data,¹³⁸ for a violation of the general provisions on video surveillance¹³⁹ as well as specific provisions on the video surveillance regarding access to official office premises and business premises,¹⁴⁰ video surveillance in the work areas¹⁴¹ and apartment buildings;¹⁴² violations of the provisions on biometrics in public¹⁴³ and private sector.¹⁴⁴ Slightly lower fines apply in the case of a violation of the provisions on direct marketing, etc.¹⁴⁵
- [66]. According to the Minor Offences Act the Information Commissioner can issue warnings for the violations of minor importance or fines in case of more serious, but still minor violations.¹⁴⁶
- [67]. However, a more serious abuse of personal data constitutes a criminal offence, defined in the Article 143 of the *Kazenski Zakonik* [Penal Code]. These actions, whose prosecution must be supported by an evidence of at least eventual intent, are, depending on a degree and type of abuse of personal data, punishable either by a pecuniary sanction or by a prison sentence ranging up to five years.¹⁴⁷ The

¹³⁶ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 91.

¹³⁷ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 92.

¹³⁸ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 93.

¹³⁹ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 95.

¹⁴⁰ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 96.

¹⁴¹ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 98.

¹⁴² Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 97.

¹⁴³ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 99.

¹⁴⁴ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 100.

¹⁴⁵ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 94.

¹⁴⁶ Slovenia/Minor Offences Act 3/07 (12.1.2007), Art. 4, 53, 57.

¹⁴⁷ Slovenia/Penal Code 55/08 (4.6.2008), Art. 143.

latter applies when the offence is committed by an official abusing his/her official position or duties.

- [68]. Judicial protection of an individual who believes his/her rights regarding personal data protection have been infringed is provided for by the *Upravno sodišče* [Administrative Court]. If an individual has suffered damage by the incursion his/her personal data he/she can on the basis of the *Obligacijski Zakonik* [Obligations Code]¹⁴⁸ have recourse to the civil court to stop the harmful conduct and to obtain compensation. Article 134 of the *Obligation Code* provides that all persons shall have the right to request the court or any other relevant authority to order that action that infringes the inviolability of the human person, personal and family life or any other personality right be ceased, that such action be prevented or that the consequences of such action be eliminated. The court or other relevant authority may order that the violator cease such action, with failure to do so resulting in the mandatory payment of a monetary sum to the person affected, levied in total or per time unit.¹⁴⁹ Article 177 provides a legal basis for the reimbursement of material damage in case of defamation or calumny caused by intention or negligence.¹⁵⁰ An aggrieved person has, pursuant to Article 178, also the right to claim the publication of the judgment or correction in his/her favour.¹⁵¹
- [69]. Finally, the affected individual has the right to a just monetary compensation independent of the reimbursement of material damage for physical and mental distress suffered *inter alia* due to the truncation of freedom or a personality right. The amount of compensation for none-material damage shall depend on the importance of the good affected and the purpose of the compensation, and may not support tendencies that are not compatible with the nature and purpose thereof.¹⁵²

4.2. Practice

- [70]. It is reported that violations and irregularities in the field of personal data protection have been mostly the same or very similar throughout the years. In the majority of cases, irregularities in personal data protection emanate not as a consequence of deliberate violations of the Personal Data Protection Act, rather as a consequence of the data controllers' lack of familiarity with the provisions of the Act, or a mere lack of attention as regards the protection of personal data. As a result, the sanctions imposed by the Information Commissioner in cases of violations are usually promptly complied with and do not require significant follow-up activities. These are, if they take place, of a judicial character.

¹⁴⁸ Slovenia/Obligations Code 97/2007 (24.10.2007).

¹⁴⁹ Slovenia/Obligations Code 97/2007 (24.10.2007), Art. 134.

¹⁵⁰ Slovenia/Obligations Code 97/2007 (24.10.2007), Art. 177.

¹⁵¹ Slovenia/Obligations Code 97/2007 (24.10.2007), Art. 178.

¹⁵² Slovenia/Obligations Code 97/2007 (24.10.2007), Art. 179.

- [71]. For example as reported in the Information Commissioner 2007 Annual Report, in 2007 133 violation procedures (up from 41 in 2006) were initiated as a consequence of violations of the provisions of the Personal Data Protection Act (ZVOP-1): 50 of them took place against the public sector entities and 83 of them against the private sector entities. On the basis of the established violations, the Information Commissioner issued: 42 warnings, 60 decisions regarding violations (46 cautions and 14 fines), and 11 payment orders. Among these, 22 offenders paid fines, whereas 74 offenders who were cautioned paid court costs. Only 11 offenders (legal entities and the responsible persons of legal entities) lodged applications for judicial protection.¹⁵³
- [72]. As stated above, the majority of cases before the Information Commissioner are brought to its attention by personal initiative of the affected data subjects. Only some 20% of cases are begun *ex officio*. This fact, as well as the public trust the Information Commission is endowed it, indicates that individuals are growingly aware of their rights in the field of personal data protection. The proactive role of the Information Commissioner, its presence in the media, and prompt reactions to the complaints that can be easily electronically submitted on its website, etc. has contributed a great deal to that result. On the other hand, there is no special legal assistance or representation provided for in the data protection cases.
- [73]. Regarding the financial risk of legal procedures in data protection cases, the court and attorney fees in principle follow the "success principle".¹⁵⁴ During the trial each party bears his/her costs.¹⁵⁵ The successful party is relieved of his/her costs. However, in some instances the court can also decide that each party bears his/her own costs.¹⁵⁶

4.3. Employment Relations

- [74]. The protection of personal data in the field of employment relations is generally governed by the Personal Data Protection Act and more specifically by the *Zakon o delovnih razmerjih* [Employment Relationship Act].¹⁵⁷ Its Article 46 prescribes that the personal data of workers can be gathered, processed, used and provided to third persons only if this Act or other laws so stipulate, and if it is necessary in order to exercise the rights and obligations arising from employment relationship or related to employment relationship. Personal data of workers can only be gathered, processed, used and provided to third persons by the employer or the worker who is specially authorised to do so by the

¹⁵³ Information Commissioner Annual Report 2007, at 27, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

¹⁵⁴ Slovenia/Civil Procedure Act 26/99 (15.4.1999), Art. 154.

¹⁵⁵ Slovenia/Civil Procedure Act 26/99 (15.4.1999), Art. 152.

¹⁵⁶ Slovenia/Administrative Dispute Act 105/06 (12.10.2006), Art. 25.

¹⁵⁷ Slovenia/Employment Relationship Act 42/02 (15.05.2002).

employer. If the legal basis for gathering personal data of workers does not exist any more, they shall be deleted immediately and no more used. The provisions of the first three paragraphs shall also apply to personal data of applicants.¹⁵⁸

- [75]. *Zakon o evidencah na področju dela in socialne varnosti* [Labour and Social Security Registers Act]¹⁵⁹ in Article 13 precisely defines the data that the employers can include in their employees' records. To facilitate the correct processing and protection of personal data in employment relations the Information Commissioner has also issued special guidelines.¹⁶⁰
- [76]. When the employers collect personal data of their employees they must comply with the principle of proportionality by processing only those data which are adequate and in their extent appropriate in relation to the purposes for which they are collected and processed.¹⁶¹ The employer may thus only demand from the applicant to submit documents proving the fulfilment of conditions for carrying out work. However, the employer is specifically prohibited to require from the applicant to provide information on the family and/or marital status, pregnancy, family planning or other information unless they are directly related to the employment relationship.¹⁶²
- [77]. The employers usually implement the statutory requirements of personal data protection through the adoption of more detailed internal company regulations. The Information Commissioner, when explicitly approached regarding this issue, explained that the Personal Data Protection Act in adoption of these internal regulations does not bind the employers to obtain the consent of trade unions or work council.¹⁶³ Nevertheless, some Slovenian companies, most notably Lek d.d., do so as an example of good practice.¹⁶⁴ However, pursuant to Articles 77 and 80 of the Personal Data Protection Act the employers must consult the representative trade union before introducing video surveillance or employing biometric measures.¹⁶⁵
- [78]. The formal role of trade unions and work councils regarding personal data protection of the employees is therefore relatively circumscribed. However, it can be broadened and strengthened through a mutual co-operation with the

¹⁵⁸ Slovenia/Employment Relationship Act 42/02 (15.05.2002), Art. 46.

¹⁵⁹ Slovenia/Labour and Social Security Registers Act 40/06 (14.04.2006), Art. 13.

¹⁶⁰ Information Commissioner, Smernice za varstvo osebnih podatkov v delovnih razmerjih, (7.4.2008), available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/smernice/Smernice_za_varstvo_osebnih_podatkov_v_delovnih_razmerjih.pdf, last visited 23.12.2008.

¹⁶¹ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 3.

¹⁶² Slovenia/Employment Relationship Act 42/02 (15.05.2002), Art. 26.

¹⁶³ Opinion of the Information Commissioner, [http://www.ip-rs.si/varstvo-osebnih-podatkov/iskalnik-po-odlocbah-in-mnenjih/odlocbe-in-mnenja-varstvo-osebnih-podatkov/?tx_jzvopdecisions_pi1\[showUid\]=112&cHash=eab2335332](http://www.ip-rs.si/varstvo-osebnih-podatkov/iskalnik-po-odlocbah-in-mnenjih/odlocbe-in-mnenja-varstvo-osebnih-podatkov/?tx_jzvopdecisions_pi1[showUid]=112&cHash=eab2335332)

¹⁶⁴ www.delavska-participacija.com/clanki/ID070822.doc, last visited 23.12.2008.

¹⁶⁵ Slovenia/Personal Data Protection Act, consolidated version 94/07 (16.10.2007), Art. 77/5, 80/3.

employers, as described, and by a productive relationship with the Information Commissioner who has been, as the number of opinions and decisions handed down testify (i.e. more than 200), extremely proactive in this field.¹⁶⁶

¹⁶⁶ [http://www.ip-rs.si/nc/varstvo-osebni-podatkov/iskalnik-po-odlocbah-in-mnenjih/odlocbe-in-mnenja-varstvo-osebni-podatkov/?tx_jzvopdecisions_pi1\[pointer\]=1&tx_jzvopdecisions_pi1\[sort\]=date:1&tx_jzvopdecisions_pi1\[mode2\]=AND%20\(%20category%20%3D%20'48'%20OR%20category%20LIKE%20%25,48,%25'%20OR%20category%20LIKE%20'48,%25'%20OR%20category%20LIKE%20%25,48%20%20\)&tx_jzvopdecisions_pi1\[mode\]=QU5EICggY2F0ZWdvcnkgPSAnNDgnIE9SIGNhdGVnb3J5IExJS0UgJyUsNDgsJScgT1IgY2F0ZWdvcnkgTEILRSAnNDgsJScgT1IgY2F0ZWdvcnkgTEILRSAnJSw0OCcgICk%3D](http://www.ip-rs.si/nc/varstvo-osebni-podatkov/iskalnik-po-odlocbah-in-mnenjih/odlocbe-in-mnenja-varstvo-osebni-podatkov/?tx_jzvopdecisions_pi1[pointer]=1&tx_jzvopdecisions_pi1[sort]=date:1&tx_jzvopdecisions_pi1[mode2]=AND%20(%20category%20%3D%20'48'%20OR%20category%20LIKE%20%25,48,%25'%20OR%20category%20LIKE%20'48,%25'%20OR%20category%20LIKE%20%25,48%20%20)&tx_jzvopdecisions_pi1[mode]=QU5EICggY2F0ZWdvcnkgPSAnNDgnIE9SIGNhdGVnb3J5IExJS0UgJyUsNDgsJScgT1IgY2F0ZWdvcnkgTEILRSAnNDgsJScgT1IgY2F0ZWdvcnkgTEILRSAnJSw0OCcgICk%3D), last visited 23.12.2008.

5. Rights Awareness

- [79]. According to the Slovenian Public Opinion Poll the Information Commissioner is the fourth most trustworthy state institution, trailing only the President of the Republic (55 %), the Euro (53 %) and the Bank of Slovenia. What is more in December 2008, the Information Commissioner was even ranked first.¹⁶⁷ This can be taken as an indicator of a rising general popular awareness of the importance of the Information Commissioner's work as well as of the rights it is expected to protect. The same opinion has been expressed by the Information Commissioner on the basis of yearly rising number of applications and complaints it receives.¹⁶⁸ For a more definite conclusion, more specific surveys, however, would need to be conducted, which has not happened yet.

¹⁶⁷ [http://www.ip-rs.si/index.php?id=272&tx_ttnews\[tt_news\]=621](http://www.ip-rs.si/index.php?id=272&tx_ttnews[tt_news]=621)

¹⁶⁸ Information Commissioner Annual Report 2007, at 51, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008

6. Analysis of deficiencies

- [80]. The Information Commissioner noted in its 2007 Annual Report that preventive inspections will need to be enhanced, especially in relation to the data controllers that keep more personal data registers or that process sensitive personal data. These include, in particular, the data controllers in the health services, social security, insurance companies as well as all those bodies that employ more people.¹⁶⁹
- [81]. It was also reported that both the executive as well as the legislative branch will need to pay more attention to the personal data protection in proposing and adopting new statutes. The Information Commissioner reported that more emphasis should be given to the principle of proportionality and determination of the purposes for which the data should be collected. Moreover, the Information Commissioner detected numerous instances in which the regulation of the personal data protection is included in the by-laws instead in the legislative acts as it is required by the constitutional principle of legality. Sometimes, the laws that importantly affect the field of personal data protection are adopted too hastily, without an adequate deliberation. It also happens that some laws are dated already at their adoption as they are superseded by practice.¹⁷⁰
- [82]. The field which will certainly need more attention is the protection of personal data in the health sector. The Information Commissioner reports that the number of complaints against the insufficient protection of personal data in this sector is constantly on the rise. It is disturbing that very sensitive personal data related to healthcare are stored inappropriately in the insufficiently secured places.¹⁷¹ Also the judicial branch would need to increase the speed of solving the cases and hence contribute to the more efficient protection of personal data in practice. Finally, the social-networking databases on the internet and the safety of personal data on the internet in general are two big challenges that will need to be seriously addressed in the future.¹⁷²
- [83]. Many of the just raised deficiencies stem from an inadequate implementation rather than insufficient normative framework, which is in general on a very high level. The existing problems should be removed mainly through the increased awareness of the importance and means of personal data protection. In that

¹⁶⁹ Information Commissioner Annual Report 2007, at 51, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

¹⁷⁰ Information Commissioner Annual Report 2007, at 52, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

¹⁷¹ Information Commissioner Annual Report 2007, at 33, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

¹⁷² Information Commissioner Annual Report 2007, at 53, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

regard organizing even more training for the personal data collectors and investing into other awareness raising activities would be beneficial. Especially on the side of the bigger data controllers, such as health sector, better results could be achieved through the internal re-organization. Similarly the problem of physically storing the sensitive personal data could be relatively swiftly and efficiently solved by allocating additional financial resources necessary for suitable architectural and other spatial arrangements.¹⁷³

¹⁷³ Information Commissioner Annual Report 2007, at 36, available at: http://www.ip-rs.si/fileadmin/user_upload/Pdf/porocila/Letno-porocilo-07-ang.pdf, last visited 22.12. 2008.

7. Good practices

- [84]. The Slovenian Information Commissioner operates an extremely functional and always updated website both in Slovenian as well as English. For a couple of years now it has been awarded a special internet prize (*Netko*). Not only is it useful due to its efficient search engines, but also because it provides its potential users with practical advice and tools, such as for example, draft versions of internal acts regulating personal data protection.¹⁷⁴
- [85]. The Information Commissioner has been remarkably proactive. It has striven to raise the awareness of the personal data protection both among the rights bearers as well as among those bound by this constitutional and statutory duty. At the occasion of the European Data Protection Day the Information Commissioner thus every year selects a private company or public body which has been the most successful at personal data protection. It is awarded "a good practice" prize and recommended as a role model in the field.¹⁷⁵
- [86]. In 2008 Slovenia hosted the third European Conference of Information Commissioners from 13 European countries which have a similar institution. The conference was an important event for the exchange of good practices in the field.¹⁷⁶
- [87]. The right of the Information Commissioner to initiate before the Constitutional Court a review of constitutionality or legality of the legal acts if such questions arise in connection with a procedure he/she is conducting can be quoted as an example of good practice, which has already resulted, as noted in the review of cases below, in some successful constitutional challenges.¹⁷⁷

¹⁷⁴ <http://www.ip-rs.si/varstvo-osebni-podatkov/obveznosti-upravljavcev/zavarovanje-zbirke-osebni-podatkov/>, last visited 30.12.2008.

¹⁷⁵ <http://www.lek.si/slo/mediji/sporocila-za-javnost/3849/> and <http://www.ip-rs.si/novice/detajl/nagradjenja-ob-2-evropskem-dnevu-varstva-osebni-podatkov-sta-zavod-za-zdravstveno-zavarovanje-slove/>, last visited 30.12.2008.

¹⁷⁶ Available at: <http://www.ip-rs.si/novice/detajl/tretja-evropska-konferenca-informacijskih-pooblascencev-perspektive-za-transparentnost-v-evropi/>, last visited 30.12. 2008.

¹⁷⁷ Slovenia/Constitutional Court Act 64/07 (16.7.2007), Art. 23a.

Annexes

Annex 1 – Tables and Statistics ¹⁷⁸

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|------|------|------|------|----------|----------|------------|------------|
| Budget of data protection authority | N.A. | N.A. | N.A. | N.A. | 211.000€ | 432.280€ | 1.007.966€ | 1,249,060€ |
| Staff of data protection authority | N.A. | N.A. | N.A. | N.A. | N.A. | 15 | 25 | 29 |
| Number of procedures (investigations, audits etc.) initiated by data protection | 51 | 32 | 23 | 18 | 22 | 19 | N.A. | 79 |

¹⁷⁸ <http://www.ip-rs.si/index.php?id=323>, last visited 30.12.2008.

| | | | | | | | | |
|---|------|------|------|------|------|---|---|---|
| authority at own initiative | | | | | | | | |
| Number of data protection registrations | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. |
| Number of data protection approval procedures | N.A. | N.A. | N.A. | N.A. | N.A. | 6 decisions determining lawfulness of implementation biometric measures; 1 decision determining an adequate level of protection of personal data in a third country. | 12 decisions determining lawfulness of implementation biometric measures; 1 decision determining an adequate level of protection of personal data in a third country.; | 35 decisions as to admissibility of implementation of biometric measures 2 decisions as to admissibility of data transfers to third countries 6 decisions / authorizations as to admissibility of connecting of data filing |

| | | | | | | | | |
|---|----|----|----|----|----|----|-------------------|---------|
| | | | | | | | and public books; | systems |
| Number of complaints received by data protection authority | 35 | 43 | 52 | 60 | 78 | 91 | 231 | 406 |
| Number of complaints upheld by data protection authority ¹⁷⁹ | 78 | 45 | 39 | 25 | 35 | 24 | 180 | 109 |

¹⁷⁹ The figures here reflect the actual number of supervisions/inspections conducted. However, the exact ratio of the inspections that took place on the basis of the upheld complaints is impossible to discern as these statistical data are not collected.

| | | | | | | | | |
|--|--|---|--|--|---|--|---|--|
| <p>Follow up activities of data protection authority, once problems were established (please disaggregate according to type of follow up activity: settlement, warning issued, opinion issued, sanction issued etc.)</p> | <p>62 oral warnings 14 regulatory decisions 19 decisions on violations</p> | <p>43 oral warnings 5 regulatory decisions 10 decisions on violations</p> | <p>31 oral warnings 7 regulatory decisions 9 decisions on violations 3 motions for criminal charge</p> | <p>26 oral warnings 8 regulatory decisions 9 decisions on violations 4 motions for criminal charge</p> | <p>32 oral warnings 6 regulatory decisions 13 decisions on violations 2 motions for criminal charge</p> | <p>5 oral warnings 2 regulatory decisions 1 motion for criminal charge</p> | <p>46 warnings to remedy irregularities stated in the record 19 regulatory decisions 13 decisions on violations</p> | <p>13 warnings to remedy irregularities stated in the record 35 regulatory decisions 54 decisions on violations 30 warnings 7 payment orders</p> |
| <p>Sanctions and/or compensation payments in data protection cases (please disaggregate between court, data protection authority, other authorities or tribunals)</p> | <p>N.A.</p> | <p>N.A.</p> | <p>N.A.</p> | <p>N.A.</p> | <p>N.A.</p> | <p>N.A.</p> | <p>Information Commissioner: 7 warnings</p> | <p>Information Commissioner: 30 warnings</p> |

| | | | | | | | | |
|---|------|------|------|------|------|------|------------------|------------------|
| etc.) in your country (if possible, please disaggregate between sectors of society and economy) | | | | | | | 6 payment orders | 7 payment orders |
| Range of sanctions and/or compensation in your country (Please disaggregate according to type of sanction/compensation) | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. |
| Written opinions upon request of natural or legal persons | N.A. | N.A. | N.A. | N.A. | N.A. | 37 | 616 | 1144 |
| Number of constitutional challenges initiated by the Information Commissioner | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. | 2 | 2 |

Annex 2 – Case Law

Please present at least 5 cases on data protection 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 | Communication privacy and e-mails regarding competencies of Competition Protection Office |
| Decision date | 17.7.2008 |
| Reference details (reference number; type and title of court/body; in original language and English [official translation, if available]) | 0612-145/2008/9, Information Commissioner |
| Key facts of the case (max. 500 chars) | On July 7, 2008 the Information Commissioner was notified by phone that the Competition Protection Office, while making inspection surveillance in the Poslovni sistem Mercator d.d., made copies of entire hard disks of some personal computers on which personal data and personal correspondence of the company employees were stored. For this reason, compulsory legislation in the field of personal data protection was violated, since the Competition Protection Office had no legal basis for such encroachment into the privacy of the employees. Immediately after receiving this notification, the Commissioner, by official duty, introduced an inspection procedure over the implementation of the provisions of Personal Data Protection Act against the liable person, i.e. Competition Protection Office, Ministry of Economy, Republic of Slovenia. |
| Main reasoning/argumentation (max. 500 chars) | The right to communication privacy encompasses confidentiality of all types of communication means, thus protecting confidentiality of the information which was communicated by any communication means. The purpose of this protection is to prevent that no one should get hold of the content of the message communicated. Also, this right ensures freedom of communication which is expressed as a free decision of an individual for sending messages. What is crucial for encroaching into this right is that the law which allows such encroachment must be in particular clear and definite, so that the activities of state bodies who will act under such law are foreseeable. The |

| | |
|---|---|
| | <p>law needs to state precisely when such encroachment is necessary because the evidence is otherwise difficult to collect, or would be disproportionately difficult. According to Art. 37/2 of the Constitution of RS only law may prescribe that on the basis of a court order the protection of the privacy of correspondence and other means of communication and the inviolability of personal privacy be suspended for a set time when this is necessary for the institution or course of criminal proceedings or for reasons of national security. The provision of Art. 29/2 of Personal Data Protection Act does not concretize the encroachment into the right to communication privacy, therefore such encroachment is not permissible.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>According to the provisions of Personal Data Protection Act, Art. 6/1-2, the data on the use of the World Wide Web, such as the data on the websites visited, cookies, and other data generated while using the web and which refer to an identified or identifiable individual, are personal data. They can not be considered as data from business books, or business documentation, or any other documentation. Therefore, processing such data requires some legal grounds which are not ensured by the Prevention of Restriction of Competition Act.</p> |
| <p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>The liable person, Republic of Slovenia, Ministry of Economy, Competition Protection Office, is prohibited to do any further opening, renaming, changing, browsing, copying, printing, disclosing, communicating, spreading, or any other actions to make available the complete data files, existing in the following formats: .nsf (Lotus Notes), .pst, .ost, .pab and .oab (of all Microsoft Exchange/Outlook) and .dbx (Microsoft Outlook Express), which contain messages and contacts of the employees listed below of the companies Poslovni sistem Mercator d.d., Spar Slovenija trgovsko podjetje d.o.o. and Engrotuš podjetje za trgovino d.d., which were received or sent via e-mail, and folders with user profiles of the individuals listed below, i.e. the folders which exist in the folder »start:\\Documents and Settings\« and in the folder »start:\\Users\«.</p> |
| <p>Proposal of key words for data base</p> | <p>Competition protection procedure, communication privacy of the companies under scrutiny, www data as personal data Source: http://www.ip-rs.si/fileadmin/user_upload/Pdf/odlocbe/Odlocba_mercator_tus_in_Spar-eng.pdf</p> |

| | |
|--|--|
| Case title | Decision on Criminal Offence of illegally disclosing personal data |
| Decision date | 7.6.2006 |
| Reference details (reference number; type and title of court/body; in original language and English [official translation, if available]) | 0613-4/2006-19, Information Commissioner |
| Key facts of the case (max. 500 chars) | The weekly journal Demokracija published the information on top gross salaries received by some employees of the company Delo d.d. By giving full names of persons and disclosing personal data of 86 employees of Delo d.d to its readers without legal grounds for processing such personal data, nor having personal consent of these individuals it violated the provisions of Personal Data Protection Act, Art.8. It hence committed an offence pursuant to the Art. 91/1/1 of the said Act. |
| Main reasoning/argumentation (max. 500 chars) | The violations body established that a reference to the provisions of Art. 39 of the Constitution (freedom of speech) cannot be considered as a legal basis which gives the right to the journal to publish information on top salaries received by the employees of the company Delo d.d. in the journal Demokracija. Also, the offenders are not right in claiming that publishing information on salaries is legitimate due to the interest of the public only for the reason that the state of Slovenia, via its semi-public funds, i.e. Slovene Trust Foundation (SOS) and Capital Company (KAD), is a co-share holder of the company Delo. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | In this case the legal person, by publishing the list with salaries and full names of 86 employees of the company Delo d.d., encroached into the right of the protection of personal dignity and safety (Art. 34 of the Constitution of RS), the right to protect privacy and personality rights (Art. 35 of the Constitution of RS) and the protection of personal data (Art. 38 of the Constitution of RS). Encroaching into the rights from Art. 34, 35 and 38 of the Constitution of RS is in principle not permissible, while possible exceptions should be strictly evaluated, urgent and compulsory from the viewpoint of public interest. Encroachment into the privacy of a person could be allowed only to a minimal extent. In this case, the encroachment in the human rights was neither strictly evaluated nor it was necessary from the point of view of public interest, or better, it was not in the interest of the public. It needs to be emphasized that public interest [...] cannot mean something which is simply interesting for the public. Being in the interest of the public means something completely different than public interest. Public interest does not satisfy the curiosity of the public and therefore can not be an excuse for encroaching into the rights guaranteed by Art. 34, |

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| | 35 and 38 of the Constitution of RS. Therefore, pursuant to Par.3, Art. 15 of the Constitution of RS, the conclusion is that making reference to the rights of freedom of expression and public interest, cannot be an excuse for violating Art. 34., 35. and 38 of the Constitution of RS and the provisions of Personal Data Protection Act Art. 8 [...]. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | A legal person – the issuer of the journal Demokracija - was fined with 4170€, whereas a responsible person of the legal person was fined with 833€. The offenders also had to cover the costs of the procedure - lump-sum court fee. |
| Proposal of key words for data base | Media, Freedom of Expression v. Protection of Personal Data, salaries of the employees in a newspaper company, public interest Source: http://www.ip-rs.si/index.php?id=378 |

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| Case title | Decision on Criminal Offence of illegally disclosing personal data, publication of an autopsy report in the media |
| Decision date | 6.6.2006 |
| Reference details (reference number; type and title of court/body; in original language and English [official translation, if available]) | 0613-1/2006-22, Information Commissioner |
| Key facts of the case (max. 500 chars) | The newspaper Direkt published the autopsy reports of the Ljubljana Forensic Medicine Institute which referred to the autopsy of three victims in front of the entrance to the discothèque Lipa in Spodnje Pirniče. With such course of conduct the legal person illegally used the victims personal data and disclosed them to the public and by publishing them in the newspaper communicated, disseminated or made them available to everyone who bought the newspaper or to anyone into whose hands the newspaper has fallen in spite of the fact that the legal person had no legal grounds for processing personal data, nor personal consent of the individuals. |

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| Main reasoning/argumentation (max. 500 chars) | Considering the provisions of Art. 8, 10, 13 and 16 of Personal Data Protection Act the legal person could publish personal data from autopsy reports in newspaper Direkt only provided that it had a legal basis for such publication of personal data in any of the specific laws or provided that it had a personal consent for publishing of personal data relating to him/her from the individual concerned. However, no such legal basis was established. Moreover, as the processed personal data were those of deceased, they were mostly sensitive personal data. Art. 13 of the Personal Data Protection Act should be applied as the only provision which gives adequate legal basis for processing of these personal data. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | Art. 13 of the Personal Data Protection Act should be applied as the only provision which gives adequate legal basis for processing of these, i.e. sensitive personal data. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | A legal person – the issuer of the newspaper Direkt - was fined with 4170€, whereas a responsible person of the legal person was fined with 833€. The offenders also had to cover the costs of the procedure - lump-sum court fee. |
| Proposal of key words for data base | Media, Sensitive Personal Data, Legal basis for processing sensitive personal data Source: http://www.ip-rs.si/index.php?id=379 |

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| Case title | Constitutionality of the Registration of Real-Estate Act |
| Decision date | 5.7.2007 |
| Reference details (reference number; type and title of court/body; in original language and English [official translation, if available]) | U-I-464/06, Constitutional Court of Republic of Slovenia 65/07 (5.7.2007). |

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| Key facts of the case (max. 500 chars) | Upon the application for the review of constitutionality lodged by the Information Commissioner the Constitutional Court decided that the first and second paragraphs of Article 114 of the Registration of Real-Estate Act are inconsistent with Article 38 of the Constitution, inasmuch as they determine the public nature of the real-estate registry in the part which refers to data regarding owners, users, tenants, and managers of real-estate if they are natural persons. |
| Main reasoning/argumentation (max. 500 chars) | Neither the Registration of Real-Estate Act nor the legislative materials offer any grounds that by public access to data which is registered in the real-estate registry the legislature pursued the same goal as in the case of the public nature of the land registry. |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | Public nature of the real-estate registry in the part which refers to data regarding owners, users, tenants, and managers of real-estate if they are natural persons runs against the constitutional requirements of personal data protection. |
| Results (sanctions) and key consequences or implications of the case (max. 500 chars) | Invalidation of the first and second paragraph of Article 114 of the Registration of Real Estate Act. |
| Proposal of key words for data base | Constitutionality of the Registration of Real Estate Act, Public nature of the real-estate registry Source: http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/43C652E94EACAA17C125732300285CEB |

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| Case title | Constitutionality of some of the provisions of the <i>Zakon o letalstvu</i> [Aviation Act] |
| Decision date | 19.6.2008 |
| Reference details (reference number; type and title of court/body; in original language and English [official | U-I-411/06, Constitutional Court of Republic of Slovenia, 68/08 (19.6.2008). |

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| Key facts of the case (max. 500 chars) | Upon the application for the review of constitutionality lodged by the Information Commissioner the Constitutional Court decided that the Art. 128/7 and Art. 128/8(2, 11, 12, 17, 21) of the Aviation Act are not consistent with Art. 38 of the Constitution regulating the privacy of personal data. |
| Main reasoning/argumentation (max. 500 chars) | <p>The specific nature of the Aviation Act regulation the processing of personal data by which it pursues a precisely determined aim is of decisive importance when reviewing whether the purpose of processing personal data is determined in a clear and concrete enough manner, i.e. whether it is determined in accordance with the second paragraph of Article 38 of the Constitution. The constitutional requirement that the purpose of processing personal data must be provided by law does not entail that the purpose must be determined explicitly.</p> <p>The seventh paragraph of Article 128 of the Aviation Act is inconsistent with the second paragraph of Article 38 of the Constitution, as it leaves open which personal data may (still) be processed. In view of the fact that the Aviation Act does not determine all personal data which may be collected from individuals and that such depends on the needs of managers of personal data in individual cases, the interference with information privacy is not sufficiently foreseeable.</p> <p>Due to the fact that declining consent that one's personal data be collected has important consequences for individuals, the Constitutional Court finds that merely a written consent does not suffice for a constitutionally admissible interference.</p> <p>Items 2 and 21 of the eighth paragraph of Article 128 of the Aviation Act are not consistent with the Constitution, as they allow the collecting and processing not only data regarding one's unique personal identification number (EMŠO) but also data regarding one's tax number, thus two unique identifiers. The regulation which allows the processing of two unique identifiers does not pass the strict test of proportionality.</p> <p>Items 11 and 12 of the eighth paragraph of Article 128 of the Aviation Act are not consistent with the Constitution, as they also allow processing of personal data which could contribute to achieving a pursued aim only in</p> |

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| | <p>hypothetical cases. Thereby they excessively interfere with the information privacy of individuals.</p> <p>Item 17 of the eighth paragraph of Article 128 of the Aviation Act is inconsistent with the Constitution, as it is not clear and precise enough. The requirement of the clarity and precision of statutory provisions is of particular importance in the sensitive area of information privacy. A statutory provision is inconsistent with the Constitution if thereof it does not follow precisely which personal data individuals must disclose.</p> |
| <p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p> | <p>The requirements of clarity, precision, specification of purpose of statutory provisions regulating the processing of personal data to pass the constitutional muster of protection of privacy of personal data.</p> |
| <p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p> | <p>The Constitutional Court issued the so-called declaratory judgment instructing the National Assembly to remedy the identified unconstitutionality in one year time.</p> |
| <p>Proposal of key words for data base</p> | <p>Aviation Act, Protection of Personal Data, Constitutionality Source: http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/CFB124512DBE70E9C125748300247E7F</p> |