

# LAW ON PROTECTION OF PERSONAL DATA

## CURRENT SITUATION

New Law on Protection of Personal Data (hereinafter: Law), which came into force on January 1<sup>st</sup> 2009, introduced completely new chapter in a field of protection of human rights in the Republic of Serbia. Protection of personal data is guaranteed in Article 42 of the Constitution of the Republic of Serbia, adopted in 2006.

In all legally organized and democratic countries efficient legal system for protection of personal data as one of the basic human rights was established and mechanism for fulfillment of protection of such right was determined. Adoption of new law was one of the prerequisites for improvement of the Republic of Serbia in its way towards liberalization of visa regime for its citizens and also important step forward in the process of European integrations. First step in the sense of adoption of new Law was performed, and the one that lies ahead is establishment of efficient legal system for implementation of Law.

In the context of the protection of personal data, one question comes to the mind, namely: who is entitled to dispose of the data on place of residence of citizens, their address, their social and marital status, their inclinations or political orientation, whether they are paying public utilities regularly or not, etc.? Are data from medical or other records of personal data of citizens being abused? Is anybody stealing their identity? Hundreds of thousand of data records on citizens exist. Until the adoption of the Law, the field of competence for establishment, keeping and processing of personal data records was not regulated.

Citizens are confronted with various violations of privacy, without being informed on their rights. Those violations are performed in different manners, starting from trivial violations such as harassment by economical or political marketing, to cases that imply the possibility of much more serious violations of privacy, such as using or stealing of someone else's identity.

In the recent past we have witnessed extremely serious violations of the right on protection of privacy or personal data, such as: taking of large number of medical records out of the medical institutions without control, delivering of personal

records of all judges of Commercial Court in Belgrade to the media, publishing on internet of tens of thousands of personal numbers by Privatization Agency. Violations are often performed by employees of institutions or governing bodies that are entitled to establish the database, but not to its misuse.

## POSITIVE DEVELOPMENTS

Law determines in completely new manner the protection of personal data, the field in which specific legal vacuum existed up to its adoption. Target of the Law is not protection of personal data on its own, but protection of individual to which such data refer. Namely, the Law defines the terms and expressions in relation to protection of personal data, determines conditions for collection and processing of personal data (among others, it determines the rights and obligations of persons in charge of data and persons whose data are being collected), determines jurisdiction of bodies for protection of personal data - Trustee for public information and protection of personal data (hereinafter: Trustee), determines procedure before the Trustee, determines the manner of protection of data, anticipates the creation of records and manner of establishing and managing of records, determines the conditions pursuant to which data may be get out of the Republic of Serbia, determines the procedure of supervision of implementation of the Law, as well as the penalties for infringements of provisions of the Law.

The supervision over collection and processing of personal data did not exist for decades in the Republic of Serbia. However, Law anticipates the introduction of control in this field, and mandate for supervision of collection and processing of personal data is being entrusted to the Trustee.

Being that the Law is quite abstract, which makes its implementation even harder having in mind the lack of knowledge of citizens, Trustee issued "Guidebook through the Law on Protection of Personal Data" with assistance from the colleagues from the Republic of Slovenia, aiming to bring the Law closer to common citizen and to explain certain terms in accordance with the existing practice in countries of European Union. Additionally, the "Draft of Strategy for Execution of Protection of Personal Data" was presented, which is supposed to define key issues, role and liability of executive

bodies (Government), supervisory body and other entities in relation to protection of this right guaranteed by the Constitution.

## REMAINING ISSUES

A lot of work remains to be done, being that this Law is not completely in line with the European Commission Directive no. 95/46/EC. At the round table held on the occasion of adoption of "Guidebook through the Law on Protection of

Personal Data" and introduction of the "Draft of the Strategy for Execution of Protection of Personal Data" in April 2009 in the premises of the Serbian Chamber of Commerce, by the representatives of the country member to the European Union it was pointed out that existing Law does not fulfill certain standards established in the European Union and suggested the amendment or annulment of the provisions that entitle governing bodies to certain legal protection and excludes them from implementation of the provisions of the Law, such as Articles 13, 23 and 45 Paragraph 2.

## FIC RECOMMENDATIONS

- To provide for the Trustee with necessary capacities (working space, equipment, etc.) and staff (necessary number of associates, as well as descent compensations for their work) in order to efficiently perform its competencies entrusted to it by the Law;
- To determine special supervisory (inspection) bodies that would monitor enforcement of the Law and that would be under the jurisdiction of the Trustee;
- To annul or amend questionable provisions of the Law and hence to harmonize the text of the Law with the European Commission Directive no. 95/46/EC that represents "milestone of the contemporary standards in protection of personal data";
- To adopt by - laws necessary for implementation of the Law (particularly in relation to the harmonization of existing databases, pursuant to Article 61 of the Law);
- To establish precisely defined liability system for infringement of the provisions of the Law and to enable enforcement of Trustee's orders;
- To educate and inform citizens in order to raise their awareness on their rights related to the protection of personal data as well as on manners on protection of such rights, and therefore to make the Law, being quite abstract and in a way incomprehensible for citizens, more available to citizens and easier for implementation.