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# Thematic Legal Study on assessment of data protection measures and relevant institutions Romania

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# Contents

# Executive summary

## Overview

[1]. Art.26 of Romania/Constituţia României [Romanian Constitution] provides in broad terms for the right to privacy by guaranteeing that 'the public authorities shall respect and protect the intimate, family and private life.'[1]

[2]. Romania ratified most international standards relevant for data protection and the need to ensure an adequate institutional framework for the protection of personal data was given priority as an important requirement of the European Commission in the process of negotiation for the accession of Romania to the European Union.

[3]. The Romanian legal framework for the protection of personal data is established by Romania/Lege 677/2001 on the protection of personal data processing and free circulation of such data, enforced as of 12.03.2002. The legal framework was further completed by Romania/Lege 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector and by Romania/Lege 102/2005 establishing a specialised agency, the National Authority for the Supervision of Personal Data Processing. The proceedings and the functioning of the National Authority for the Supervision of Personal Data Processing has been further detailed by the Regulation on organising and the functioning of the NSAPDP.

[4]. Due to attempts to harmonise the Romanian legislation to the *acquis communautaire*, the Supervisory Authority responsible for data protection measures evolved from an institution with a general mandate to a specialised institution:

- The *Avocatul Poporului* [Ombudsman] was initially entrusted with data protection measures by Law 677/2001,
- The *Autoritatea Naţională de Supraveghere a Prelucrării Datelor cu Caracter Personal* [National Authority for the Supervision of Personal Data Processing (NSAPDP)] was established by Law 102/2005 in recognition of the need to ensure an adequate institutional framework for the protection of personal data.

[1] Romania/Constituţia României, Constitution of Romania of 1991 amended and completed by the Law 429/2003 on the revision of the Constitution of Romania, (29.10.2003), available at: http://www.cdep.ro/pls/dic/site.page?id=371 (10.01.2009).

# Data Protection Authority

[5]. As the consolidation of the administrative capacity of the Romanian Supervisory Authority was considered a requirement of the European Commission for the accession to the European Union, the National Authority for the Supervision of Personal Data Processing was established in 2005, replacing the mandate of the Ombudsman entrusted in 2001 with monitoring this area.

[6]. The NSAPDP is the central authority which exerts the competence established mainly by Law 677/2001, independent from any public authority or private entity. Gradually, the NSAPDP has also been entrusted with competencies in related areas (monitoring the processing of personal data and the protection of privacy in the electronic communications sector, e-commerce, control authority according to the Convention for the enforcement of the Schengen Agreement and of the Convention on the European Police Office etc.).

# Compliance

[7]. The duties of registration of data processing operations and related procedures transpose the requirements of community legislation. The Romanian legal framework fails to establish an obligation for data controllers to appoint a data protection officer and to provide the profile of data protection officers (or suggest minimum requirements on special expertise).

[8]. Given the generalised lack of information regarding the legal obligations and the role of the NSAPDP, as well as the scarce resources of the institution which act as barriers in a proactive engagement of the Supervisory Authority, it is impossible to assess the real level of compliance with data protection legislation in practice.

# Sanctions, Compensation and Legal Consequences

[9]. When solving complaints, registering notifications or after making investigations having as a result identification of a violation of the legislation concerning personal data protection, the Supervisory Authority can take a variety of measures ranging from compulsory measures such as permanent or temporary termination, suspension or

prohibition of processing and erasure of illegally processed data (partially or completely), to administrative sanctions (warnings or fines) or it can notify the criminal investigation authorities or file a case before the court.

[10]. The framework legislation on protection of personal data does not provide for the possibility of compensation; the data subject alone carries the burden and the risk of initiating court proceedings when suffering from infringements of his or her rights as a result of illegal data processing.

[11]. The area of legal assistance and representation for data subjects is underdeveloped.

[12]. The likelihood of legal practitioners to engage in strategic litigation in the field of data protection is rather limited. This might happen partially because eight years after the European Court of Human Rights sanctioned Romania in ECHR/Rotaru v. Romania (4.05.2000) for violations of Articles 8, 13 and 6.1 in a case regarding false personal data recorded and processed by the secret services and used in a case against the plaintiff, the relevant legislation had not been consequently amended.

# Rights Awareness

[13]. There are no studies or surveys on the level of awareness regarding data protection legislation carried out by the Supervisory Authority or by any of its partners. NSAPDP is trying to promote the legislative framework by disseminating leaflets, brochures, by updating its website and organising seminars.

# Analysis of deficiencies

[14]. Different types of deficiencies are identified as barriers to effective data protection: the main deficiency is the lack of awareness on the legal framework and the role of the Supervisory Authority but there are also deficiencies related to an incomplete or inadequate legal framework, failure to enforce existing legal provisions and deficient interpretation of legal provisions triggering infringements of fundamental rights.

[15]. The biggest challenge remains the fact that data protection legislation is not connected with the rest of the Romanian legislative framework and it is still an isolated, under-enforced mechanism.

## Good Practice

[16]. The online system for registration of notifications and the partnerships established by the Supervisory Authority with relevant institutions can be considered as good practices.

## Miscellaneous

[17]. Some of the future themes of interest in the field are the need to explicitly spell out the right to protection of personal data in a future constitutional revision as well as the need to issue norms and develop adequate methodologies on collecting personal data for statistical purposes in view of facilitating legislative drafting and public policies.

# 1. Overview

[18]. Absent an explicit constitutional provision on the protection of private data, the Romanian legal framework aimed at ensuring data protection measures comprises the relevant international standards and the specific legislation developed as a part of the process of accession to the European Union.

[19]. Though a copy and paste exercise generating a legal framework almost identical with the EU standards, the Romanian data protection and correlated legislation lacks connectivity with the rest of the legislative framework and remains a foreign implant slowly acquiring grounding in the Romanian legal system.

[20]. The development of the relevant institutional structure consists in a transfer from the institution of the Ombudsman which had a very general mandate including protection of personal data among its many attributions, to the specialised agency, the NSAPDP, established in 2005.

[21]. In spite of the obvious need, data protection and, in particular, the effectiveness of the data protection systems are new topics which did not generate fruitful debates among Romanian practitioners.[2]

## 1.1. Romanian constitutional standards relevant for data protection

[22]. Romania/Constituţia României provides in broad terms for the right to personal and family privacy in Art. 26 by guaranteeing that 'the public authorities shall respect and protect the intimate, family and private life.'[3]

[2] For a similar assessment see, Bogdan Manolea, '*EDRI-gram, Key privacy concerns in Romania 2007'*, (30.01.2008) available at: http://www.edri.org/edrigram/number6.2/privacy-romania-2007 (05.02.2009).

[3] Romania/Constituţia României, Constitution of Romania of 1991 amended and completed by the Law 429/2003 on the revision of the Constitution of Romania, (29.10.2003), available at: http://www.cdep.ro/pls/dic/site.page?id=371 (10.01.2009).

[23]. The NSAPDP makes a plea in its annual 2006 report that 'a future revision of Romania's Constitution should consider to insert in the category of fundamental rights, the right of personal data protection.'[4]

[24]. It can be argued that this right became a part of the Romanian law as incorporated by the relevant provisions of Art. 8 of the EU Charter of Fundamental Rights, as the Lisbon Treaty was ratified by the Romanian Parliament and adopted as law (7.02.2008)[5] and Art. 20(2) of the Romanian Constitution establishes the primacy of international covenants and treaties on the fundamental human rights Romania is a party to, unless the Constitution or national laws contain more favourable provisions.

[25]. Romania was sanctioned by the European Court of Human Rights in ECHR/Rotaru v. Romania (4.05.2000) in which the applicant alleged a violation of his right to respect for his private life on account of the holding and use by the *Serviciul Român de Informaţii* [Romanian Intelligence Service] of a file containing personal information, an infringement of his right of access to court, and his right to a remedy before a national authority that could rule on his application to have the file amended or destroyed.[6] Though the European Court found violations of Articles 8, 13 and 6.1, the legislation deemed as infringing the provisions of the European Convention has not been amended subsequently.

[26]. In 2006, the *Curtea Constituţională* [Romanian Constitutional Court (RCC)] assessed the constitutionality of Art. 26 of Law 677/2001, by which the decisions of the Supervisory Authority can be appealed only before one level of jurisdiction, such a decision being final. The plaintiff was an institution sanctioned by the NSAPDP who tried to have the administrative decision quashed. As a part of its legal strategy, the plaintiff challenged the constitutionality of the legal provision regarding the regime of the NSAPDP decisions by which specific measures are taken such as: the suspension or the ceasing of data processing or the deletion of data. The Constitutional Court decided that the contested provision is constitutional, arguing that the right to two different levels of jurisdiction is only applicable in criminal law and that the right to

[4] Romania/Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, *Raport Anual 2006*, pag. 5, available at: http://www.dataprotection.ro/servlet/ViewDocument?id=427 (29.12.2008).

[5] Romania/ Lege 13/2008 pentru ratificarea Tratatului de la Lisabona de modificare a Tratatului privind Uniunea Europeană și a Tratatului de instituire a Comunității Europene, semnat la Lisabona la 13 decembrie 2007(07.02.2008).

[6] For an overview of the facts and of the findings in the case see Annex with case law ECHR/Rotaru v. Romania (4.05.2000).

access to justice is also observed 'when the legal provisions allow for specific competencies and venues for the appeal.'[7]

## 1.2. Relevant international standards ratified by Romania

[27]. Romania ratified most international standards relevant for data protection:

a. Council of Europe instruments:

i. The **European Convention on Human Rights**, ratified with reservations on 20.06.1994;

ii. The **Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data** ratified as Romania/Lege 682/2001 for ratification of the Convention for the Protection of Individuals with regards to Automatic Processing of Personal Data, on 28.11.2001;

iii. The **Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding Supervisory Authorities and Transborder Dataflow** ratified as Romania/Lege 55/2005 on ratifying the Additional Protocol to the Convention on the protection of individuals with regard to the automatic processing of their personal data, regarding the control authorities and the dataflow across borders, on 29.11.2005;

iv. The **Convention on Human Rights and Biomedicine** and its **Additional Protocol** ratified on 24.04.2001 and entered into force on 01.08.2001.

b. United Nations instruments:

i. The **International Covenant on Civil and Political Rights,** ratified on 9.12.1974 with reservations,

[7] Romania/Curtea Constituţională/Decizie 821 (9.11.2006) referitoare la excepţia de neconstituţionalitate a prevederilor art.26 alin.(1) din Legea nr.677/2001 pentru protecţia persoanelor cu privire la prelucrarea datelor cu caracter personal şi libera circulaţie a acestor date. [ Decision 821/2006 of the RCC on the objection as to the constitutionality of Art.26(1) of Law 677/2001]

understandings and declarations submitted under Articles 1.3 and 48) and not including interstate complaints (Art.41);

ii. The **First Optional Protocol to the ICCPR** ratified on 20.07.1993 with reservations, understandings and declarations submitted under Art.5.2.a and the **Second Optional Protocol to the ICCPR** ratified on 27.02.1991.

## 1.3. Romanian data protection legislation

[28]. The Romanian legal framework for the protection of personal data was mainly developed under the pressure of the requirements to harmonise Romanian legislation with the *acquis communautaire* and consisted of a mere translation of the acquis.[8]

### 1.3.1. Legislation related to Directive 95/46/EC

[29]. Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data was transposed in Romanian legislation by Romania/Lege 677/2001 on the protection of personal data processing and free circulation of such data, into force as of 12.03.2002.

[30]. The purpose of Law 677/2001 is 'to guarantee and protect the natural persons' fundamental rights and freedoms, especially the right to personal, family and private life, concerning the processing of personal data.'[9]

[31]. The scope of Law 677/2001 covers: 'the processing of personal data, performed, totally or partially, through automatic means, as well as to

[8] EPIC (2006), *Privacy and Human Rights Report, 2006, Romania*, available at: http://www.worldlii.org/int/journals/EPICPrivHR/2006/PHR2006-Romania.html (04.02.2009).

[9] Romania/Lege 677/2001 on the protection of personal data processing and free circulation of such data, Art. 1, (12.03.2002) available at: http://www.dataprotection.ro/index.jsp?page=legislatie_primara&lang=en (29.12.2008). The author used the official translation done by the NSAPDP available at: http://www.dataprotection.ro/index.jsp?page=legislatie_primara&lang=en (29.12.2008) excepting the cases when the official translation was not sufficiently clear.

the processing through means other than automatic, which are part of, or destined to, an evidence filing system-storage system.'[10]

[32]. Law 677/2001 defines personal data in Art. 3 as 'any information referring to a natural person, identified or identifiable; an identifiable person is a person who can be identified, directly or indirectly, particularly with reference to an identification number or to one or more factors specific to details of his physical, physiological, economical, cultural or social characteristics and identity.'

[33]. Law 677/2001 applies to 'the processing of personal data, performed by natural or and legal persons, Romanian or foreign, under public and private law, regardless of whether the data processing is taking place in the public or the private sector'[11] and it 'does not apply to the processing of personal data, carried out by natural persons exclusively for their own interests, if the data in question is not published or otherwise made public, and not destined to be revealed.'[12] Neither does it apply 'to the processing and transfer of personal data, carried out in the framework (…) of national defence and national security, within the limits and restrictions stated by the law.'[13]

[34]. Law 677/2001 prescribes the general and special rules regarding the processing of personal data (Articles 4-11) and the rights of the data subject in the context of personal data processing:

a. informing the data subject – Art.12,
b. the right of access to data- Art.13,
c. the right to see and rectify intervention upon data- Art.14,
d. the right to object- Art.15,
e. the right of not being subject to an individual decision – Art.17,
f. the right to refer to a court- Art. 18,
g. confidentiality of data processing – Art. 19,
h. security of data processing – Art. 20.

[35]. The Law 677/2001 established as the Supervisory Authority the *Avocatul Poporului* [Ombudsman] (Art. 21) and conferred upon this

[10] Romania/Lege 677/2001 on the protection of personal data processing and free circulation of such data, Art. 2, (12.03.2002) available at: http://www.dataprotection.ro/index.jsp?page=legislatie_primara&lang=en (29.12.2008).

[11] Romania/Lege 677/2001 on the protection of personal data processing and free circulation of such data, Art. 2(4), (12.03.2002) available at: http://www.dataprotection.ro/index.jsp?page=legislatie_primara&lang=en (29.12.2008).

[12] Romania/Lege 677/2001 on the protection of personal data processing and free circulation of such data, Art. 2(6), (12.03.2002) available at: http://www.dataprotection.ro/index.jsp?page=legislatie_primara&lang=en (29.12.2008).

[13] Romania/Lege 677/2001 on the protection of personal data processing and free circulation of such data, Art. 2(7), (12.03.2002) available at: http://www.dataprotection.ro/index.jsp?page=legislatie_primara&lang=en (29.12.2008).

institution full autonomy and invested it with tasks related to monitoring, investigating, recording, controlling and sanctioning, providing support, regulating and raising public awareness on the issue (Chapter VI of the Law 677/2001).

[36]. The provisions of Law 677/2001 were supplemented in 2005 by Romania/Lege 102/2005 on the setting up, organising and functioning of the National Supervisory Authority for Personal Data Processing as a distinct Supervisory Authority.[14] The proceedings and the functioning of the NSAPDP have been further detailed by its Regulation on organising and the functioning of the NSAPDP.[15]

[37]. Law 102/2005 was amended by Romania/Ordonanţa 115/2006 for the amendment and the completion of Law no. 102/2005 regarding the setting up, organising and functioning of the National Supervisory Authority for Personal Data Processing (27.12.2007) which was meant to respond to the need for institutional development of NSAPDP by providing for the increase of personnel from 50 to 97 and the possibility to establish territorial offices. Ordinance 115/2005 however did not enter into force as it was rejected by the Parliament during the procedure of parliamentary approval.[16]

### 1.3.2. Legislation related to Directive 2002/58/EC

[38]. Romania/Lege 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector aimed to transpose Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector.

[39]. Law 506 establishes the specific conditions for safeguarding the right to privacy with respect to the processing of personal data in the electronic communications sector and its provisions 'apply to the providers of public electronic communications networks and of publicly available electronic communications services, as well as to the providers of value added services and of directories of subscribers

[14] Romania/Lege 102/2005 on the setting up, organising and functioning of the National Supervisory Authority for Personal Data Processing, (12.03.2002) available at: http://www.dataprotection.ro/index.jsp?page=legislatie_primara&lang=en (29.12.2008).

[15] Romania/ Autoritatea Naţională de Supraveghere a Prelucrării Datelor cu Caracter Personal, Regulament, Regulation on organising and functioning of the National Supervisory Authority for Personal Data Processing available at: http://www.dataprotection.ro/index.jsp?page=documents&lang=en (28.12.2008).

[16] Romania/Lege 270/2007, regarding the rejection of the Emergency Ordinance of the Government 115/2006 (1.10.2007).

who, in the course of their commercial activity, are processing personal data.'[17]

[40]. Law 506/2004 defines as user 'any natural person using a publicly available electronic communications service, without necessarily having subscribed to this service,' and as traffic data 'any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing thereof.'[18]

[41]. NSAPDP is entrusted with sanctioning tasks under Romania/Lege 506/2004 on personal data processing and protection of private life in the field of electronic communication which transposed Directive 2002/58/EC of the European Parliament and European Council related to personal data processing and protection of the private life in the field of e-communications. Law 506/2004 further refines the provisions of Law 677/2001 in the area of electronic communications and guarantees the personal data protection taken over from suppliers of electronic communication public networks, e-communication service suppliers destined to the public, added value service suppliers and registers of subscribers' suppliers.[19]

### 1.3.3. Legislation related to Directive 2006/24/EC

[42]. Regulations on data retention were recently adopted through Romania/Lege 298/2008 on the retention of the data generated or processed in connection with the provision of publicly available electronic communications services or of public networks. The Law creates 'the duty of service providers and of public networks of electronic communications to retain certain data generated or processed during activities of providing services of electronic

[17] Romania/Lege 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector, Art. 1(2), (12.03.2002) available at: http://www.dataprotection.ro/index.jsp?page=legislatie_primara&lang=en (29.12.2008). The author used the official translation done by the NSAPDP available at: http://www.dataprotection.ro/index.jsp?page=legislatie_primara&lang=en (29.12.2008) excepting the cases when the official translation was not sufficiently clear.

[18] Romania/Lege 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector, Art. 2, (12.03.2002) available at: http://www.dataprotection.ro/index.jsp?page=legislatie_primara&lang=en (29.12.2008).

[19] Law 506/2004 stipulates the obligation of the service suppliers in the field of e-communications to adopt a series of measures to guarantee the confidentiality and the security of network communication, intended to protect the personal data processed. The regulatory Authority in Communications and Information Technology is liable for the establishment of security conditions though Art.3 of the Law 506/2004 fails to define security conditions and mentions solely that 'Having regard to the state of the art and the cost of their implementation, the measures taken shall ensure a level of security appropriate to the risk presented..' The NSAPDP is in charge of the control of confidentiality of communications.

communications in order to provide them to the relevant authorities, with the purpose of using them during activities of investigation of serious crimes.'[20] The law was adopted in spite of criticism from ISPs and other telecom operators that believe it puts a high financial burden on providers[21] and in spite of criticism by IT experts who question its constitutionality invoking a German precedent.[22] As the law entered into force in January 2008, the media and the civil society strongly protested against the provisions of the law.

### 1.3.4. Other relevant legislation

[43]. Romania/Lege 365/2002 on e-commerce[23] invested the NSAPDP with other duties regarding information-related services. Law 365/2002 transposed Directive 2000/31/EC related to certain legal issues about information related services, especially e-commerce on the domestic market. The purpose of the law is to establish the terms for supply of services to information companies, the criminal punishment of deeds committed in relation to the security of e-commerce domains, with issuance and use of electronic payment instruments as well as the use of identity data for making financial operations, in order to provide a favourable framework for the free movement and development under secure conditions of these services.

[44]. Law 365/2002 establishes the mandate of the NSAPDP and of the *Autoritatea Naţională de Reglementare în Comunicaţii şi Tehnologia Informaţiilor* [National Regulatory Authority in Communications and Information Technology],[24] and spells out offences in the field of e-commerce, in particular the lack of compliance with the obligation to obtain the express approval of the addressee prior to receiving commercial notifications by e-mail, as well as the lack of observance of legal terms for such communications.

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20 Romania/Lege 298/2008 on the retention of the data generated or processed in connection with the provision of publicly available electronic communications services or of public networks (18.11.2008) available at http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=9455 (29.12.2008).

21 EPIC, (2006) *Privacy and Human Rights Report, 2006, Romania*, available at: http://www.worldlii.org/int/journals/EPICPrivHR/2006/PHR2006-Romania.html (04.02.2009).

22 Bogdan Manolea, '*Noi nu vrem pastrarea datelor de trafic*', available at: http://legi-internet.ro/blogs/index.php/2008/03/06/noi_nu_vrem_pastrarea_datelor_de_trafic_(07.01.2009). See also, Alex Radulescu, *Guvernantilor de mucava cat mai multa integrare*, available at: http://www.alexradescu.ro/2008/02/gudovernanti-de-mucava-dar-doritori-de-integrare.html (07.01.2009).

23 Romania/Lege 365/2002 on e-commerce (29.11.2006).

24 Romania/Autoritatea Naţională de Reglementare în Comunicaţii şi Tehnologia Informaţiilor, available at http://www.anrcti.ro/ (04.01.2009).

[45]. Romania/Lege 161/2003 on certain measures aimed at ensuring transparency in the exercise of public functions and in the business environment, on preventing and sanctioning of corruption establishes the *Sistemul Electronic Naţional* [National Electronic System] which aims to be an online interface between the citizens and the public institutions.

[46]. Romania/Ordonanţa 84/2001 regarding the establishment, organisation and functioning of public community services for the records of persons provides for specific services which work with systems comprising the totality of personal data of Romanian citizens, derived from the automatic processing of the information obtained in various forms. Such public services must assure, depending on the competences established by the relevant normative documents in force, elaborating, maintaining and issuing of: marital status documents, identity cards, electoral lists, as well as receiving requests regarding identification documents and issuing regular passports, driver's licenses, vehicle registration certificates and plate number registrations. The Ordinance provides for other specialised bodies such as the *Inspectoratul Naţional pentru Evidenţa Persoanelor* [National Inspectorate for the Evidence of Persons], as a specialised authority of the central public administration, a legal entity under *Ministerul Internelor şi Reformei Administrative* [Ministry of Administrative Reform and Internal Affairs (MIRA)] and for *Centrul Naţional pentru Administrarea Bazelor de Date şi Evidenţa Populaţiei* [National Centre for the Administration of Data Basis concerning the Evidence of Persons] and its territorial offices.

[47]. As it is anticipated that Romania will join 'Schengen' in 2009, the NSAPDP was mandated as a control authority, which ensures the external control of personal data processing performed by the Romanian data controller, the Ministry of Administrative Reform and Internal Affairs, according to the Convention for the enforcement of the Schengen Agreement.[25]

[25] Romania/Ministerul Internelor si Reformei Administrative, *Evolutia spatiului Schengen*, available at: http://www.schengen.mira.gov.ro/Documente/utile/catutil/Schengen.pdf (05.01.2009).

# 2. Data Protection Authority

## 2.1. Background of the Supervisory Authority

### 2.1.1. Supervisory Authority between 2001-2005

[48]. Law 677/2001 established as the Supervisory Authority for data protection the *Avocatul Poporului* [Ombudsman][26] and conferred upon this institution full autonomy and invested it with tasks related to monitoring, investigating, recording, controlling and sanctioning, providing support, regulating and raising public awareness in this field (Chapter VI of the Law 677/2001).[27]

[49]. The Romanian Ombudsman is an institution of Swedish inspiration, introduced by the Romania/Constituţia României [Romanian Constitution][28] and finally established by the organic law regulating the functioning of the institution adopted as late as 1997 and revised subsequently.[29] The ongoing problem of the Ombudsman was the confusion as to the role and attributions of the institution, which resulted, for instance, in a large number of petitions requesting the Ombudsman to provide court representation[30] and the clash between high expectations and the limited powers of the Ombudsman.

[50]. The Ombudsman himself rejected his mandate in relation with data protection and stated that delegating the responsibility to monitor and control the processing of personal data to the Ombudsman was discordant with its fundamental role.[31] Researchers active in the field considered that this particular institutional arrangement contradicted the European trend of establishing specialised bodies and that 'the

[26] Romania/Lege 677/2001 on the protection of personal data processing and free circulation of such data, Art. 21, (12.03.2002) available at: http://www.dataprotection.ro/index.jsp?page=legislatie_primara&lang=en (29.12.2008).

[27] The official website of the institution is available at: http://www.avp.ro/ (05.012.2008)

[28] Arts. 58–60, Romania/Constituţia României(20.10.2003).

[29] Romania/Lege 35/1997 (28.12.2007) concerning the organisation and functioning of the Ombudsman, available at: http://www.avp.ro/ (02.09.2008).

[30] Romania/Avocatul Poporului, *Annual Report of the Ombudsman, 1997-1998* available at: http://www.avp.ro/ (02.09.2008).

[31] *Avocatul Poporului îsi declinã competentele privind protectia datelor cu caracter personal,* (The Ombudsman Declines Responsibilities on Personal Data Protection) in Azi, 13.02.2004, available at: http://www.azi.ro/arhive/2004/02/13/social.htm#stirea, cited in Bogdan Manolea, *Institutional Framework For Personal Data Protection in Romania*, available at: http://www.apti.ro/webfm_send/18 (03.01.2009).

privacy and personal data protection has been a secondary topic for the institution (of the Ombudsman).'[32]

[51]. In order to take on its recently acquired mandate on data protection, as early as 2001, the Ombudsman established a group for the protection of persons in relation to personal data processing and free movement of such data, a group which was subsequently transformed into the Department for protection of persons with regard to personal data processing, supervised by one of the deputies of the Ombudsman[33]

[52]. Between 2002 and 2005, 3,039 notifications were recorded, 22 investigations were carried out, seven preliminary controls and 138 permits were issued for the transfer of personal data abroad.[34] This was perceived as 'weak progress'[35] during the EU accession monitoring process, hence 'the European Commission requested the remedy of shortcomings by establishing an independent control authority – namely, the National Supervisory Authority for Personal Data Processing.'[36]

[53]. Law 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector extended the mandate of the Supervisory Authority to include: monitoring, recording, storing and any other form of interception and surveillance of communications and related traffic data; use of an electronic communication network with the purpose of storing the acquired information in the terminal equipment of a subscriber or user or of obtaining access to it; data processing of traffic or of location; establishing subscriber directories; spamming.

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[32] Bogdan Manolea, '*Institutional Framework For Personal Data Protection in Romania',* available at: http://www.apti.ro/webfm_send/18 (03.01.2009).

[33] Romania/Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, *Raport Anual 2006*, pag. 5, available at: http://www.dataprotection.ro/servlet/ViewDocument?id=427 (29.12.2008).

[34] Romania/Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, *Raport Anual 2006*, pag. 5, available at: http://www.dataprotection.ro/servlet/ViewDocument?id=427 (29.12.2008).

[35] See European Commission, *The comprehensive monitoring report for Romania,* from 25.10.2004, available at: http://europa.eu.int/comm/enlargement/report_2004/pdf/rr_ro_2004_en.pdf as well as *The comprehensive monitoring report for Romania, European Commission* from 25.10.2005.

[36] Romania/Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, *Raport Anual 2006*, pag. 5, available at: http://www.dataprotection.ro/servlet/ViewDocument?id=427 (29.12.2008).

### 2.1.2. Supervisory Authority after 2005

[54]. On 12.05.2005, Law 102/2005 on the setting up, organising and functioning of the National Supervisory Authority for Personal Data Processing, entered into force and the Supervisory Authority has become independent as of the 01.01. 2006.[37]

[55]. The 2007 annual report of the NSAPDP mentions that Romania ranked second with the best results in the field of the protection of data, according to a report of Privacy International.[38]

[56]. From June 2007, the NSAPDP has been participating in the Common Control Authority, with the role of controlling the technical assistance service of the Schengen Information System established according to Art. 115 of the Convention for the enforcement of the Schengen Agreement (Schengen Convention).[39] According to Art. 114 of the Schengen Convention, the NSAPDP is a control authority, which ensures the external control of personal data processing performed by the Romanian data controller legally designated to manage the implementation of the Schengen Convention (the Ministry of Internal Affairs and Administrative Reform).[40]

[57]. According to Romania/Ordonanţa de Urgenţă 61/2007 enforcing the Convention regarding the formation of the European Police Office, the NSAPDP was designated as a Supervisory Authority in the field, according to the provisions of Art. 23 of the Europol Convention which calls for the designation of an independent authority to monitor and control the transfer of the data by the Member State to Europol.

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37 The official website of the institution is available at: http://www.dataprotection.ro/ (30.11.2008)

38 Romania/Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, *Raport Anual 2007*, p. 3, available at: http://www.dataprotection.ro/servlet/ViewDocument?id=428 (29.12.2008).

39 Romania/Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, *Raport Anual 2007*, p.44, available at: http://www.dataprotection.ro/servlet/ViewDocument?id=428 (29.12.2008).

40 In this capacity NSAPDP exerts an independent control over the data of the national section of the Schengen Information System and verifies if the processing and the use of data inserted into the Schengen Information System does not infringe the rights of the person at stake.

# 2.2. Organisation and structure of the NSAPDP

## 2.2.1. Leadership of the NSAPDP

[58]. The organisational structure and the attributions of the NSAPDP departments are established by Romania/Hotărârea Biroului Permanent al Senatului, Decision of the Standing Bureau of the Senate 16/2005 of 2.11.2005 on approving the Regulation on organising and functioning of the National Supervisory Authority for Personal Data Processing[41]

[59]. The NSAPDP President as well as its vice-president are appointed by the Romanian Senate for five-year mandates which may be renewed only once.[42] According to Art.6, they must be Romanian citizens with a law degree. The President and the vice-president must enjoy real independence, have a good professional competence, a good reputation and a high civic probity. The position of the President is assimilated to that of a secretary of state and it includes management and representation of the institution.[43] The President can issue decisions and instructions mandatory for all institutions and units whose activities are the object of the acts.

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41 Romania/Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, Regulament [Regulation on the organising and functioning of the National Supervisory Authority for Personal Data Processing], available at: http://www.dataprotection.ro/index.jsp?page=documents&lang=en (28.12.2008).

42 Art.7 of Law 102/2005 provides that:
(1) The proposals regarding the candidates for President and vice-president shall be made by the Standing Bureau of the Senate, at the recommendation of the parliamentary groups of the two Chambers of the Parliament.
(2) The candidates shall submit to the Committee for legal affairs, appointment, ethics, immunity and validation within the Senate, the acts certifying that they do fulfill the conditions under law in order to exercise the presidency or vice-presidency of the national supervisory authority. The candidates will be interviewed by the Committee for legal affairs, appointment, ethics, immunity and validation. The Senate passes a judgment upon over the plenary hearing.
(3) The appointment of the President of the national supervisory authority is made with the majority vote of the senators. If during the first scrutiny the above mentioned majority is not reached, new elections must be organized and only the first two candidates of the previous scrutiny may participate.

43 Romania/Lege 102/2005 on the setting up, organising and functioning of the National Supervisory Authority for Personal Data Processing, (12.03.2002), Art. 3, available at: http://www.dataprotection.ro/index.jsp?page=legislatie_primara&lang=en (29.12.2008).

[60]. The independence of the President of the NSAPDP is guaranteed also by the termination procedures applicable both to the President and to the vice-president.[44]

[61]. According to Art.5, the President also submits annual activity reports to the plenary session of the Senate. The reports must contain information regarding the NSAPDP activity. They may contain recommendations regarding the need for legislative amendments or other measures aiming at the protection of the citizens' rights and liberties with regard to personal data processing.

### 2.2.2. Structure of the NSAPDP

[62]. The NSAPDP is structured in four specialised departments,[45] with the purpose of ensuring the implementation of the provisions of Directive 95/46/EC:

a. Service of data controllers and data processing (record and analysis of notifications filed by personal data controllers);

b. Investigation service (controls, investigations, solving complaints and notifications);

c. Office of permits issuance (issuing authorisations for the transfer of data abroad and for health related data processing);

d. European integration office and international relations (harmonisation of the internal legislation with the community legislation, foreign relations activity).

[63]. The financial, economic, administrative and staff related activity is managed by the Economic and Human Resources Division, and court

[44] Art. 9: (1) The President's mandate, the one of the vice-president, respectively, ends before the expiration of its term in case of resignation, revocation or incompatibility with other public or private functions, incapacity of carrying out the attributions for more than 90 days, attested by a medical examination, or death.
(2) The removal from office of the President or the vice-president of the national supervisory authority, as a result of infringing the Constitution and the laws or in case of failure to carry out his/her duties, shall be carried out at the proposal of the Standing Bureau of the Senate, on the basis of the report of the Committee for legal affairs, appointment, ethics, immunity and validation, with the majority vote of the senators.
(3) The resignation, incompatibility, incapacity of carrying out the attributions or the death shall be ascertained by the Standing Bureau of the Senate no later than 10 days from the appearance of the cause determining the ceasing of the mandate.

[45] Romania/Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, *Raport Anual 2006*, p. 9, available at: http://www.dataprotection.ro/servlet/ViewDocument?id=427 (29.12.2008).

representation as well as preparation of endorsements, opinions, recommendations, issuance of decisions, public and mass-media relations are within the competence of the Legal and Communication Office.[46]

[64]. Art.15 of Law 102/2005 provides that the maximum number of positions, except for the dignitaries, is 50 (starting with a staff of 37 in its first year of existence and 49 in 2006), 'the staff consists of civil servants or hired (contractual) personnel, appointed after examination', and the payroll and the structural departments are approved by the National Supervisory Authority's President.

[65]. A 2007 proposal to amend the law and to increase the personnel from 50 to 97 was rejected by the Parliament.[47]

## 2.3. Legal powers of the NSAPDP

[66]. The legal powers of the Supervisory Authority remain as spelled out by Art. 21(3) of Law 677/2001,[48] to 'monitor and control the legal

[46] Romania/Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, *Raport Anual 2006*, p. 9, available at: http://www.dataprotection.ro/servlet/ViewDocument?id=427 (29.12.2008).

[47] Romania/Lege 270/2007 regarding the rejection of the Emergency Ordinance of the Government no. 115/2006 (1.10.2007).

[48] Art.21(3)of Law 677/2001 provides for the following functions of NSAPDP:

1. issues the standard notification forms and its own registers;
2. receives and analyses the notifications concerning the processing of personal data and informs the data controller on the results of the preliminary control;
3. authorises personal data processing in the situations set out by law;
4. may dispose, if it notices the infringement of the provisions of the present law, temporarily suspending the data processing or ending processing operations, the partial or total deletion of processed data and may notify the criminal prosecution bodies or may file complaints to a court of law;
5. informs the natural or legal persons that work in this field, directly or through their associative bodies on the need to comply with the obligations and to carry out the procedures set out by this law;
6. keeps and makes publicly accessible the personal data processing register;
7. receives and solves petitions, notices or requests from natural persons and communicates their resolution, or, as the case may be, the measures which have been taken;
8. performs investigations - ex officio, or upon requests or notifications;
9. is consulted when legislative drafts regarding the individual's rights and freedoms are being developed, concerning personal data processing;
10. may make proposals on the initiation of legislative drafts or amendments to legislative acts already enforced, in the fields linked to the processing of personal data;
11. collaborates with the public authorities and bodies of the public administration, centralises and analyses their yearly activity reports on the protection of individuals with regard to the processing of personal data, issues recommendations and assents on any matter linked to the protection of fundamental rights and freedoms regarding the processing of personal data, on request of any natural person, including the public

framework concerning of the processing of personal data' and comply with the general attributions established under Art.28 of Directive 95/46/EC:

a. Directive 95/46/EC Art. 28(2) - Requirement to consult in the preparation or adoption of measures transposed in Art. 21(3) sub-paragraphs I and J of Law 677 and the NSAPDP annual reports for 2006 and 2007 mention a series of drafts in relation with which the institution was consulted;

b. Directive 95/46/EC Art. 28(3) – Requirement to endow Supervising Authority with investigative powers comprised of:

   i. Powers of access to data forming the subject matter of data processing are transposed in Art. 27(3) of Law 677/2001[49] and Art. 13 of Law 102/2005;[50] the refusal

authorities and bodies of public administration; these recommendations and assents must mention the reasons on which they are based and a copy must be transmitted to the Ministry of Justice; when the recommendation or assent is requested by the law, it must be published in the Official Journal of Romania, Part I;

12. co-operates with similar foreign authorities in order to ensure common assistance, as well as with foreign residents for the purpose of guaranteeing the fundamental rights and freedoms that may be affected through personal data processing;

[49] Art.27 of Law 677/2001 mentions:
1) In the course of personal data processing, the supervisory authority may investigate, ex officio or upon request, any violation of the data subjects' rights, of the obligations of the controller, and, as the case may be, of the empowered persons, to the purpose of defending the fundamental rights and freedoms of the data subjects.
(2) The supervisory authority may not exercise its investigative powers in a case where a complaint was previously filed in a court on the same case of rights violation, opposing the same parties.
(3) In the exercise of its investigative powers, the supervisory authority may demand of the data-controller any information linked to the processing of data and may verify any document or record regarding the processing of personal data.
(4) The State and professional secrets and [the professional one[?]] must not be invoked in order to prevent the exercise of the powers of the supervisory authority set out by the present law. When protection of the state or of the professional secrets is invoked, the supervisory authority has the obligation to keep the respective secrets.
(5) If the supervisory authority in the exercise of its its investigative power has as the objective of a processing of personal data, carried out by the public authorities, and in relation to such activities as described under Article 2 paragraph (5) for a concrete case, it is necessary to obtain a preliminary agreement of the prosecutor, or of the competent court of law.

[50] Art. 13 of Law 102/2005 provides:
(1) The National Supervisory Authority has the right to make personal investigations, to request from the public administration authority the necessary information and documents for the investigation, to question and to take declarations from the leaders of the public administration authority and from any other civil servant who can give the necessary information for solving the request addressed to the National Supervisory Authority regarding the personal data processing and free movement of these data.
(2) The provisions of the paragraph (1) apply to the other public authorities and institutions, public services under the authority of the public administration authority, as well as to the

to provide information is sanctioned by Art. 34 of Law 677/2001[51] – the annual reports do not mention if any sanctions had been applied in application of this provision;

ii. Powers to collect all information necessary for the performance of supervisory duties are also transposed in Art. 27 of Law 677/2001 under the same sanction in case of failure to comply;[52]

c. Directive 95/46/EC Art. 28(3) – powers of intervention such as:

i. delivering opinions before processing operations are carried out is provided for by Art. 21(3) sub-paragraph B of the law,

ii. ensuring appropriate publication of such opinions is provided for by Art. 21(3) sub-paragraphs F and J of the law,

iii. ordering the blocking, erasure or obstruction of data is provided for by Art. 21(3) sub-paragraph D of the law,

natural and legal persons subject to the legislation regarding personal data processing and free movement of such data.

51 Art. 34 of Law 677/2001 provides as a specific sanction for refusal to provide information: 'Refusal to supply the requested information or documents to the supervisory authority in the exercise of its investigative powers as set out by Article 27 is considered a contravention, if the respective offence maladministration falls short of a criminal offence, and is liable to a fine between 10 million to 150 million ROL (EUR 250-4,000.).

52 Art. 27 of Law 677/2001 mentions:
(1) In the course of personal data processing, the supervisory authority may investigate, ex officio or upon request, any violation of the data subjects' rights, of the obligations of the controller, and, as the case may be, of the empowered persons, to the purpose of defending the fundamental rights and freedoms of the data subjects.
(2) The supervisory authority may not exercise his investigative powers in a case where a complaint was previously filed in a court on the same case of rights violation, opposing the same parties.
(3) In the exercise of its investigative powers, the supervisory authority may demand of the data-controller any information linked to the processing of data and may verify any document or record regarding the processing of personal data.
(4) State secrecy and professional secrecy must not be invoked in order to prevent the exercise of the powers of the supervisory authority set out by the present law. When protection of the state or of professional secrets is invoked, the supervisory authority has the obligation to keep the respective secrets.
(5) If the supervisory authority in the exercise of its investigative power has as the objective of a processing of personal data, carried out by the public authorities, and in relation to such activities as described under Article 2 paragraph (5) for a concrete case, it is necessary to obtain a preliminary agreement of the prosecutor, or of the competent court of law.

iv. imposing a temporary or definitive ban on processing data is provided for by Art. 21(3) sub-paragraph D of the law,

v. warning or admonishing the controller is provided for by Art. 21 (3) sub-paragraph F of the law,

vi. referring the matter to national parliament or other political bodies is provided for by Art. 21 (3) sub-paragraph J of the law.

d. Directive 95/46/EC Art. 28(3) - Powers to engage in legal proceedings or to bring violations to the attention of judicial authorities is provided for by Art. 21(3) sub-paragraph D of the law and the annual reports for 2006 and 2007 of NSAPDP mention cases deemed by the authority serious enough to trigger criminal investigations.

e. Directive 95/46/EC Art. 28(4) – Power to hear claims lodged by any person, or an association representing that person, concerning the protection of his rights and freedoms in regard to the processing of personal data is provided for by Art. 21(3) sub-paragraph F, a legal capacity increasingly used as reported in 2006 and 2007.

## 2.4. Remit of the NSAPDP

[67]. Art. 21 of Law 677 defines as the responsibility of the Supervisory Authority to monitor and control the legal framework concerning the processing of personal data subject to the law. The law defines in Art. 2 processing of personal data as 'processing of personal data, performed, totally or partially, through automatic means, as well as the processing through means other than automatic, which are part of, or destined to, an evidence filing system-storage system.[53]

[53] Art. 2 of Law 677/2001 further defines the scope of the law:
(2) The present law applies to:
a. the processing of personal data, carried out in the context of the activities of data controllers based in the frame of activities effectuated by controllers established in Romania;
b. the processing of personal data, carried out by data-controller in the frame of activities effectuated by the diplomatic missions or consular offices of Romania;
c. the processing of personal data, on Romanian territory, carried out by data controllers not based in Romania, by using any means, unless these means are only used for purposes of transiting the processed personal data through Romanian territory.
d. by data-controller in the frame of activities effectuated by controllers who are not residents of Romania by using means of any nature, situated on the territory of Romania, except for

[68]. Romanian legislation expanded the scope of application beyond the scope of Convention no. 108 of the Council of Europe covering also processing by other than automatic means if the data belong or are intended to be part of a system of records.

[69]. According to Art. 2(4) the mandate applies to the processing of personal data, performed by natural or and legal persons, Romanian or foreign, under public and private law, regardless of whether the data processing takes place in the public or the private sector. The law, within its stated limits, 'also applies to the processing and transfer of personal data, carried out in the framework of crime prevention, criminal offence prevention, criminal investigation, public order and repressing activities and maintaining public order, and also to other activities performed in the domain of criminal law, within the limits and restrictions stated by the law.'

[70]. Art. 2(6) provides that the law does not apply to the processing of personal data, carried out by natural persons exclusively for their own interests, if the data in question is not published or otherwise made public or revealed.

[71]. The law does not apply to the processing and transfer of personal data carried out in the framework of national defence and national security, within the limits and restrictions stated by the law.

## 2.5. Resources of the NSAPDP

[72]. NSAPDP has its own budget, which is part of the State Budget.[54] In its annual reports, NSAPDP does not include any assessment on the sufficiency of its allocated budget or whether there are particular activities which could be developed under the condition of increased resources.

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the case in witch these means are only used for the purpose of transit through Romanian territory of the personal data, witch are subject to the respective processing.

[54] Art. 17 of Law 102/2005 provides:
(1) The National Supervisory Authority has its own budget, stipulated as a distinct part of the state budget.
(2) The draft budget is elaborated by the National Supervisory Authority and it is submitted to the Government in order to be included as a distinct post in the draft state budget. The President's objections to the draft budget elaborated by the Government are submitted to the Parliament in order to be resolved.
See also Romania/Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, *Raport Anual 2006*, p. 6, available at: http://www.dataprotection.ro/servlet/ViewDocument?id=427 (29.12.2008).

[73]. The 2006 annual report of the Supervisory Activity mentions that the NSAPDP received from the public budget a sum amounting to ROL 4,651,000 (approx. EUR 132,130.682) of which ROL 4,603,390 (approx. EUR 130,778.125) were actually used, thus resulting in a budgetary execution of 98.98 per cent.

[74]. In 2007, the reported budget of the NSAPDP was ROL 3,884,000 (approx. EUR 116,381.506), out of which ROL 3,809,270 (approx. EUR 114,142.271) were effectively used, which represents a budget use rate of 98.08 per cent.

## 2.6. Independence of the NSAPDP

[75]. Art. 21(2) of Law 677 provides for the independence of the Supervisory Authority which is 'fully independent and acts impartially.'

[76]. Art. 1 of Law 102/2005 provides that the NSAPDP is a public authority with a legal mandate, autonomous and independent in relation with any other authority of the public administration, as well as in relation to any other natural or legal person of public or private law. It exercises the legal attributions granted to it in the field of personal data processing and the free movement of such data. The NSAPDP exercises its attributions in a transparent and impartial manner and it may not be subject to any imperative or representative mandate or to instructions and dispositions from other authorities.[55]

[77]. The proceedings for the appointment and the dismissal of the President and of the vice-president of the NSAPDP (Articles 6-9 of Law 102/2005) provide minimal guarantees of independence. In practice, the appointments for similar positions by any of the Chambers of the Parliament prove to be politically driven and follow the political structure of the moment.

[78]. The independence of the NSAPDP is also ensured through the way it is financed, as it has its own budget, which is part of the State Budget.[56]

[55] Romania/Lege 102/2005 on the setting up, organising and functioning of the National Supervisory Authority for Personal Data Processing, (12.03.2002), Art. 2, available at: http://www.dataprotection.ro/index.jsp?page=legislatie_primara&lang=en (29.12.2008).

[56] See Section 2.5 on Resources of the NSAPDP and Art. 17 of Law 102/2005 which provides: (1) The National Supervisory Authority has its own budget, stipulated as a distinct part of the state budget.

# 2.7. Control and investigation by the NSAPDP

## 2.7.1. Preliminary control

[79]. The NSAPDP can carry out preliminary controls whenever it finds that a processing notified to the Authority might present risks for the rights and liberties of natural persons, under the conditions stipulated by Art. 23. The preliminary control should be announced to the data controller within five days from the date of notification, and the decision issued as a result of such control must be communicated within 30 days from the same date. During this period of time the data controller is not allowed to start personal data processing.

[80]. No preliminary control was carried out before 2006, two such controls were reported in 2006 and 21 in 2007.

## 2.7.2. Investigations and ex officio investigations of the NSAPDP

[81]. According to Articles 25-27 of Law 677/2001, investigations can be initiated automatically when the Supervisory Authority identifies any violation of the law, either as a result of receiving complaints or notifications. Investigation assignments can be carried out only when no legal proceedings have been initiated with the same litigants and having the same object.

[82]. The Supervisory Authority can also perform investigations ex officio according to Art. 21(3) sub-paragraph G of Law 677/2001 and Art. 12 of Law 102/2005.

[83]. The 2006 annual activity report mentions a total of 153 investigations conducted in 2006, as compared to only eight investigations in 2005, six in 2004 and eight in 2003. The annual reports of the NSAPDP do not distinguish between investigations based on complaints,

(2) The draft budget is elaborated by the National Supervisory Authority and it is submitted to the Government in order to be included distinctly in the draft state budget. The President's objections to the draft budget elaborated by the Government are submitted to the Parliament in order to be solved.
See also, Romania/Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, *Raport Anual 2006*, p. 6, available at: http://www.dataprotection.ro/servlet/ViewDocument?id=427 (29.12.2008).

notifications or ex officio investigations, thus making impossible an assessment of the pro-activity of the Supervisory Authority. The NSAPDP did not engage in any form in the discussions triggered by various incidents.

[84]. The 2007 activity report mentions that in 2007, 280 investigations were performed, representing an increase of 83 per cent with respect to the year 2006 and of 1,200 per cent with respect to the period 2002-2005. Out of this number, 235 investigations were carried out by default, and 45 as a consequence of complaints filed with the NSAPDP (21) or of notifications (24).

### 2.7.3. Complaints

[85]. Persons who consider themselves injured in their rights as a result of personal data processing may file complaints with the Supervisory Authority under the condition of not having previously filed actions in court with the same object and against the same party. Another condition is that a complaint is submitted to the data controller in question 15 days in advance of filing the complaint with the NSAPDP. The person proving that the observance of this mandatory procedure would lead to immediate and irremediable prejudice can be exempted from this obligation.

[86]. Upon receiving the complaint, the NSAPDP can take the following steps: hearing of the person concerned, of the data controller or the authorised person, carrying out an expert analysis, and temporarily suspending the processing of data by the data controller who is the object of the complaint. A decision must be taken, justified and communicated to the parties within 30 days from the date when the complaint was filed.

[87]. The NSAPDP can also file a complaint before the court with the purpose of defending the rights of the data subject as provided by the law. The court is the *Tribunalul Municipiului Bucureşti* [Bucharest Tribunal] and the action is exempted from judicial taxes.

[88]. The decision of the NSAPD can be appealed according to Art. 26 of the law: the data controller or the data subject can appeal against the decision in 15 days after the decision was communicated. The appeal has to be filed with the relevant administrative court. The appeal will be judged under the emergency procedure, with the parties being subpoenaed. The decision of the court is final and irrevocable.

[89]. In 2006, the NSAPDP received 51 complaints from individuals and procedures had been initiated in 18 cases, including 16 investigations on sight, at the office of the accused data controller. In 2007, the NSAPDP received 51 complaints, mostly regarding the disclosure of personal data and the reporting of personal data of debtors to various banks at the Credit Bureau or at the Credit Risk Office.

## 2.8. Monitoring role of the NSAPDP

[90]. The NSAPDP is mandated to monitor data protection in general (Art. 21(3) of Law 677/2001). Infringements of duties regarding data protection are detected by the specially created Investigations service[57] as a result of notifications filed by data controllers, complaints filed by individuals or organisations representing individuals, potential victims of infringements and *ex officio*.

[91]. Annually the NSAPDP prepares an activity plan identifying priorities for its monitoring activities: in 2006 these were video surveillance, records of data in the system of credit offices, advertising campaigns and direct marketing, and health services.[58]

[92]. The 2007 activity report mentioned as the four important themes for the activity of the NSAPDP: telemarketing – processing of personal data performed by means of services focused on the provision of commercial information related to the products or services of a commercial agent, by long-distance communication means (i.e., by phone); debt recovery – processing personal data of the debtors pursued for the collection of debts; selection and placement of the workforce – personal data processing of applicants for jobs within the borders of the country or abroad; tourism agencies – personal data processing carried out within the context of booking or of selling various touristic products.

[93]. There is no relevant data available to indicate how pro-active the NSAPDP is in carrying out its monitoring mandate. The annual reports mention the exercise of identifying the list of topics to be monitored as priority as a part of annual exercises.

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57 Response of National Supervisory Authority for the Protection of Personal Data No. 0017780 (10.12.2008) to request filed on 20.11.2008 repeated on 10.12.2008, on file with FRALEX expert.

58 Romania/Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, *Raport Anual 2006*, p. 25, available at: http://www.dataprotection.ro/servlet/ViewDocument?id=427 (29.12.2008).

# 2.9. Decisions of the NSAPDP and relationship with Opinions of the Article 29 Working Party

## 2.9.1. Publicity

[94]. The decisions of the NSAPDP informing the data-controllers on the results of the preliminary control following their notifications as well as the resolutions issued after petitions, communications or requests are communicated to the data-controller only.

[95]. The data of the NSAPDP regarding the personal data processing registry is available to the general public according to Art. 21(3) sub-paragraph E of Law 677/2001;

[96]. In the cases when the NSAPDP formulates recommendations and comments or 'advisory opinions on any matter linked to the protection of fundamental rights and freedoms regarding the processing of personal data, on request of any natural person, including the public authorities and bodies of the public administration; these recommendations and advisory opinions must mention the reasons they are based on and must be communicated, in copy, to the Ministry of Justice; when the recommendation or the advisory opinion is requested by the law, it must be published in the Official Gazette of Romania.'[59]

[97]. The web site of the NSAPDP, www.dataprotection.ro provides the main decisions adopted as secondary legislation by the Authority and according to the NSAPDP, other decisions can be made available upon request in accordance with the provisions of the legislation regarding free access to information if the information requested is not influencing an ongoing legal case or the right to privacy (however, no such decision was communicated to the author by the NSAPDP when solicited for the purpose of this study).[60]

[59] Art. 21(3) sub-paragraph J of Law 677/2001.

[60] Response of National Supervisory Authority for the Protection of Personal Data No. 0017780 (10.12.2008) to request filed on 20.11.2008 repeated on 10.12.2008, on file with FRALEX expert.

### 2.9.2. Relationship with the Article 29 Working Party

[98]. Romania participates in the Working Party meetings with one or two representatives from the NSAPDP and some of the most important opinions of the Working Party are published on the website of the NSAPDP.[61]

[99]. The NSAPDP's activities seemed to be inspired by the priorities and debates in the Working Party. In 2007, the NSAPDP carried out a comprehensive investigation with the banks following the discussions generated by the SWIFT case. Also in 2007, the NSAPDP initiated a theme investigation on the protection of personal data by the companies which provide medical insurance services (Report 1/2007 of the Working Group), using the method and the instruments used by the Working Group.

## 2.10. Advisory role of the NSAPDP

[100]. Art. 21(3) sub-paragraphs I and J of Law 677/2001 provide the legal framework for the NSAPDP's advisory capacities.

[101]. The annual report for 2006 mentions that the institution was consulted for the following documents:

i. Draft Government Decision for the approval of the Methodological norms of unitary application of the legal provisions related to the records, domicile, residence and the identity documents of Romanian citizens;[62]

ii. Government Decision regarding the form and content of identity documents, of the stamp for the establishment of the residence and of the real estate registry;[63]

[61] http://www.dataprotection.ro/?page=workgroup&lang=en (03.01.2009).

[62] Following the recommendations of the NSAPDP, the initiator finally included an article providing that the supply and use of the personal data in the National Register of Persons' Records shall be executed observing the provisions of Law no. 677/2001.

[63] Romania/Hotărâre de Guvern 839/2006 (29.06.2006).

iii. Draft law on the obligation of the air carriers to provide data on passengers, transposing Directive 82/2004;[64]

iv. Draft amendments to Law no. 677/2001 for the protection of persons related to the personal data processing and the free circulation of such data;

v. Draft of the Government's Decision for the approval of the methodological norms of applying the Government's Emergency Order no. 102/2005 regarding the free circulation on Romanian territory of citizens of the Member States of the European Union and of the Economic European Area and to establish the form and content of the documents issued to European Union citizens and their family members;

vi. Draft law on the establishment and organisation of the National System of Genetic Data.

[102]. The annual report for 2007 mentions interventions of the NSAPDP in relation to:

a. Romania/Ordonanţa de Urgenţă 36/2007 for the abrogation of Law 476/2003 establishing a tax for the notification of personal data processing, falling under Law no. 677/2001 – the Emergency Ordinance abrogated the taxes imposed to data controllers at the time of the notification of the supervision authority, motivating that the respective taxes represented a hindrance impeding free circulation of personal data between the Member States of the European Union;

b. Draft for the amendment and the completion of Law no.677/200, Art. 2(7) excluding the exemption from the enforcement of the law to the processing of personal data within activities performed in the field of national defence and security;

c. Draft law on the establishment and organisation of the National System of Genetic Data establishing the conditions in which biological samples can be collected from certain categories of data subjects or from the traces left at the site of a crime, with the purpose of identifying the genetic profile and the

[64] Romania/Ordonanta de Urgenţă 34/2006 adopted as Romania/Lege 451/2006 which specifically mentions the duty to observe the requirements of Law 677/2001.

conditions in which the data comprised in this national system can be processed;

d. Emergency Ordinance for the regulation of measures for the enforcement of the Convention regarding the European Police Office, signed on the 26th of July 1995, on grounds of the provisions of art. K 3 of the Treaty regarding the European Union and its protocols;

e. Memorandum regarding the accession of Romania to the Treaty between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on stepping up cross-border cooperation, especially in view of combating terrorism, cross-border crime and illegal migration, signed in Prüm, on 27.05.2005;

f. Memorandum on 'The Negotiation of the Agreement between the Government of Romania and the Government of the Republic of Bulgaria regarding police cooperation in the field of penal law';

g. Draft enabling the NSAPDP to proceed with the verification of electronic communications providers who must keep traffic data for one year, with the purpose of the prevention and of fight against serious offences.

[103]. On the basis of Articles 4, 5, 19 and 20 of Law 677/2001, the NSAPDP issued written recommendations to *Inspectoratul General al Poliţiei* [the General Inspectorate of the Romanian Police (GIP)] to implement a uniform procedure for the verification of personal data by the subordinated police units into the database administered by the National Centre for Databases regarding the Evidence of the Persons, including in the case of units who do not have direct, computerised access to this database. Consequently, the verification procedure must provide the registration of clear information, allowing the identification at any time of the person who required the verification, of the solicited/obtained data, of the date of verification and of the reason. GIP issued a set of methodological norms regarding the access to the database containing the records of the population providing concrete conditions for the direct or, as the case may be, indirect access of policemen to the database, with the exclusive purpose of fulfilling job-related duties, and stated the method to use in order to highlight such access.

[104]. In 2007, the NSAPDP was also consulted in relation to: the Decision for the amendment of the Decision of the President of the National Authority for the Regulation of Communications 1074/2004 regarding the implementation of the universal service in the sector of electronic communications; the possibility and the effective method of using personal data (name and address) from the database of the National Pension and Other Social Rights Authority by the Supervision Commission of the Private Pension System with the purpose of informing the population and especially the employed population of Romania included in the public pension system, on the new legal framework regarding the private pension system.

[105]. Given the need for the implementation of the Schengen Agreement, the Supervisory Authority undertook to organise in 2008 working groups for the support of the legislative harmonisation in the field of the protection of data.

[106]. According to Art. 21(3) sub-paragraph J of Law 677/2001, the NSAPDP can issue recommendations, a function used by the NSAPDP both in 2006 and in 2007:

a. At the request of the National Inspectorate for Population Statistics, the NSAPDP issued a recommendation regarding the provisions of the draft amending Labour Methodology no. 677/2001;

b. The NSAPDP provided support to a series of public authorities and institutions (the Chamber of Deputies, the Ministry of Public Finances and the Ministry of Environment and Water Management, the Academic Clinic County Hospital Timişoara) which requested the opinion of the NSAPDP on the interpretation and enforcement of Law no. 544/2001 regarding free access to public information for situations in which the media or non-governmental organisations require information considered public which contains personal data;[65]

[65] The position of the NSAPDP is based on Art. 11 of Law 677/2001 providing for exceptions, cases when the processing may be done without the consent of the person in cause, if the processing concerns personal data revealed in public by that person or which are strongly related to the status of public personality of that person or to the public character of the deeds that person is involved in. In its argumentation, the NSAPDP referred to data processing for journalistic purposes, which 'represents an application of the fundamental constitutional principle of freedom of expression, as well as of the principles enumerated in Directive 95/46/EC of the European Parliament and in Articles 9 and 10 from the Agreement no. 108 from 1981 of Europe Council.' The Romanian Constitutional Court also looked at these provisions from the perspective of the right to privacy and found that the possible expenses are being provided, per chapters, in the budgets of public authorities and institutions including those with the personnel and salaries. The Court mentioned that the salaries of the personnel

c. The NSAPDP issued an opinion following the request of the Community Public Local Service for Population Statistics in Paşcani assessing the ability of this institution to issue copies of the permanent electoral lists to the territorial branch of a political party;

d. The Community Public Local Service for Population Statistics in Braşov required an opinion from the NSAPDP regarding the consultation of permanent electoral lists by the institutions which analyse the public opinion;

e. **S**.C. Metrorex S.A. sought the position of NSAPDP regarding the disclosure of some images recorded by the observation cameras required by televisions Antena 1 and Pro TV in relation to a missing minor;

f. The National Unit of Europol within the Center for International Cooperation among Policemen solicited a position regarding the implementation of the Information System of Europol at the level of the National Unit of Europol.

## 2.11. Awareness raising role of the NSAPDP

[107]. In 2006, the NSAPDP informed the professional associations regarding their obligation to issue conduct codes including adequate standards for the protection of rights of those persons whose personal data are being processed. Some of such codes were submitted for approval to the Supervisory Authority, according to the provisions of Art. 28 from Law no. 677/2001. In 2006, the National Union of Insurance and Reinsurance Companies from Romania and the Brokers' Association consulted with the NSAPDP and issued codes of conduct and in 2007 the NSAPDP endorsed the codes of conduct of the Romanian Bank Association and of the Association of Private Practice Stomatologists of Romania.

[108]. In 2007, the NSAPDP carried out a campaign for raising the awareness of the general public regarding the rights of the individuals concerned in the field of personal data processing, including within the Convention for the enforcement of the Schengen Agreement,

of institutions within the budgetary sector are established in normative documents, which are also public. However, the Court considered that the concrete salary of a person, established within the minimum and maximum limits provided in the normative documents, taking into consideration the work, the contribution to the accomplishment of duties and the personal situation, are not considered as public anymore, but private data of that person. (Romanian Constitutional Court/Decision 615/2006).

and organised seminars with the heads of the county police inspectorates.

[109]. The NSAPDP reports that no studies assessing the level of knowledge regarding data protection legislation have been carried out by the institution or by any of its partners.[66]

# 3. Compliance

## 3.1. Registration of data processing

[110]. Art. 22 of Law 677/2001 provides the obligation of the data controller to notify the Supervisory Authority, prior to processing. Before 2007, according to the provisions of Law 476/2003, the notification was subject to a tax, amounting to ROL 100 (approx. EUR 3) for individuals and ROL 1000 for legal entities (public authorities, retired persons, students, pupils and unemployed were exempted). This provision had been repealed by Emergency Ordinance 36/2007.

[111]. If the notification is incomplete, the NSAPDP requires its completion. Complete notifications are recorded in the personal data processing registry, available to the public in accordance with Art. 24. The number of notifications transmitted as a result of the registration must be mentioned by the data controller on any document collected, stored or transmitted with personal data. If during the processing of personal data the information initially transmitted is modified, this must be brought to the knowledge of the NSAPDP within five days. The incomplete notification may lead to administrative sanctions (misdemeanours) for the omission of notification in bad faith, according to Art. 31 of Law 677/2001.

[112]. To facilitate the process of registration, the NSAPDP issued Decision 60/2006, establishing standard forms of notifications[67] by which the Authority has provided two notification forms referred to as F1 and F2.[68] The Authority also published a Guide for filling in notification

[66] Response of National Supervisory Authority for the Protection of Personal Data No. 0017780 (10.12.2008) to request filed on 20.11.2008 repeated on 10.12.2008, on file with FRALEX expert.

[67] Romania/ANSDCP/Decizie 60/2006, NSAPDP, Decision 60/2006 establishing standard forms of notifications stipulated by Law 677/2001 (12.06.2006) available at: http://www.dataprotection.ro/?page=secondary_legislation&lang=ro (07.01.2009).

[68] F1 includes a General Notification (including the sections related to the transfer abroad of personal data) or Simplified notification (only certain sections are filled in) while Form F2 is

forms, made available free of charge and online[69] and the annual reports of the NSAPDP discuss the common mistakes and difficulties in complying with the duties of data processing registration and offer guidance in order to facilitate the understanding of the legal provisions.

[113]. In observance of Art. 22(9), the NSAPDP also issued Decision 90/2006 regarding the cases when it is not necessary to provide notification of personal data processing,[70] Decision 91/2006 concerning the situations allowing the simplified notification of personal data processing[71] and Decision no. 100/2007 on certain categories of data processing which are not susceptible to affecting, at least not *prima facie*, the rights of the persons concerned.[72]

## 3.2. Processing of sensitive data

[114]. Decision 89/2006 of the chairman of the NSAPDP lists the personal data processing operations which might present special risks to the rights and liberties of persons.[73] The situations regulated by this decision, triggering the exercise of the preliminary control, are:

a. classes of data defined as 'special' by the legislation and doctrines related to personal data protection;

b. certain automatic means used for processing, such as geo-localisation, Internet, electronic messages, electronic communication networks in general;

filled in for personal data processing made by certified public authorities, enabled to conduct preventive actions, research and repression of offences and to maintain of public order, as well as other activities in the field of criminal law.

69 Romania/ANSDCP/ Ghid de notificare, Guide on notifying the NSAPDP, available at: http://www.dataprotection.ro/?page=ghid_notificare&lang=ro (28.12.2008).

70 Romania/ANSDCP/Decizie 90/2006, NSAPDP, Decision 90/2006 regarding the cases when it is not necessary to notify the personal data processing, (28.07.2006) available at: http://www.dataprotection.ro/?page=secondary_legislation&lang=ro (07.01.2009).

71 Romania/ANSDCP/Decizie 91/2006, NSAPDP, Decision 91/2006 regarding the cases when the simplified notification of the personal data processing is allowed, (28.07.2006) available at: http://www.dataprotection.ro/?page=secondary_legislation&lang=ro (07.01.2009).

72 Romania/ANSDCP/Decizie 100/2007, NSAPDP, Decision 100/2007 on certain categories of data processing which are not susceptible of affecting, at least not prima facie, the rights of the persons concerned., (23.11.2007) available at: http://www.dataprotection.ro/?page=secondary_legislation&lang=ro (07.01.2009).

73 Romania/ANSDCP/Decizie 89/2006, NSAPDP, Decision 89/2006 on classes of operations of personal data processing, susceptible to present special risks for persons' rights and liberties (28.07.2006) available at: http://www.dataprotection.ro/?page=secondary_legislation&lang=ro (07.01.2009)

c. the purpose of processing, in cases such as: examination of solvability, economical financial situation, facts that might trigger disciplinary, administrative or criminal liability of data subjects, scientific research of sensitive data;

d. certain classes of persons concerned, respectively minors.

[115]. If the data controllers intend to process data to which the provisions of Decision no. 89/2006 apply, they must notify the Supervisory Authority at least 30 calendar days prior to initiating processing.

## 3.3. Data controllers and data protection officers

[116]. According to Art. 3 letter e) of Law 677/2001, the data controller is 'any natural or legal person, of private or public law, including public authorities, institutions and their territorial structures, which establish the purpose and means of processing personal data; if the purpose and means of processing the personal data are determined by a norm or on grounds of a normative act, the data controller is the natural or legal person, of public or private law, who is appointed as data controller by or on basis of that normative document.'

[117]. The law fails to create an obligation for the appointment of a data protection officer or to require a special expertise for the staff of the data controller responsible for processing of personal data, but it defines the person delegated by the data-controller to process personal data (the processor) as 'any natural or legal person, operating under private or public law, including public authorities/institutions and their territorial bodies, institutions and their territorial structures, which processes personal data on behalf of the data-controller'( Art(3) sub-paragraph F). In its 2006 annual report, the NSAPDP mentions that it could not identify in all situations the person responsible for the processing of the personal data, as data controller.

# 4. Sanctions, Compensation and Legal Consequences

## 4.1. Sanctions and possible compensations

[118]. The legal framework allows for a variety of measures which can be taken by the NSAPDP after reacting to complaints and notifications or after making investigations resulting in identification of a violation of the legislation concerning personal data protection:

a. issuing a decision including specific compulsory measures such as permanent or temporary termination, suspension or prohibition of processing and erasure of illegally processed data (partially or completely);
b. issuing an administrative sanction (which can be an administrative warning or a fine);
c. notifying the criminal prosecuting authorities if the deeds are criminal;
d. filing actions before the courts of law to defend the rights of the persons subject to data processing.

[119]. As in the case of any other misdemeanours, proof of intent or negligence as aggravating or mitigating elements are taken into consideration when deciding the type of sanction, the particular amount of the fine or if the deed qualifies as a crime.

[120]. The annual reports of the NSAPDP do not mention if problems identified in another manner than via complaints have a higher rate of sanctioning. Follow-up investigations mentioned in the reports usually mention compliance by the data controllers with the recommendations of the Authority.

[121]. Law 677/2001 sanctions the omission to notify when notification is mandatory as well as incomplete notification or including false information in Art. 31 and defines them as misdemeanours unless they do not fulfil the requirements to be qualified as criminal deeds. The fine ranges between ROL 5,000,000 (EUR 1250) and ROL 100,000,000 (EUR 2500).[74]

[74] In July 2005, ROL (old Romanian Leu) 1,000 was denominated and became RON (new Romanian Leu) 1. The fines provided for in the legislation adopted prior to this date are in ROL while the sanctions are issued in RON.

[122]. Data processing by a data controller or by a person delegated by the data controller without observance of Articles 4-10 (general requirements for data processing, conditions of legitimacy, conditions of processing for sensitive data) or of Articles 12-15 (the rights of the person object of data processing) or of Art. 17 (the right not to be subjected to an individual decision on grounds of automatic data processing), are misdemeanours according to Art. 32, unless they do not fulfil the requirements to be qualified as criminal deeds and the fine ranges between ROL 10,000,000 (EUR 2,500) and ROL 250,000,000 (EUR 62,500).

[123]. Art. 33 of the Law sanctions the failure to comply with the duties regarding the confidentiality and the implementation of the security measures as provided by Articles 19 and 20, as misdemeanours according to Art. 32, unless they do not fulfil the requirements to be qualified as criminal deeds and the fine ranges between ROL 15,000,000 (EUR 3750) and ROL 500,000,000 (EUR 135,000).

[124]. Refusal of providing information or documentation required by the Supervisory Authority during its investigations, if not qualified as criminal, is sanctioned with a fine between ROL 10,000,000 (EUR 2,500) and ROL 150,000,000 (EUR 37,500).

[125]. The sanctions issued by the NSAPDP can be challenged before a court of law in the administrative sections of the tribunals according to Art. 35(3) with the advantage of being exempt from paying judicial taxes.

[126]. In 2006, the NSAPDP issued 65 warnings and 31 fines, in a total amount of RON 43,800 (EUR 10,850) and in 2007 it issued warnings (64) and fines (95). The total amount of the fines applied in 2007 was RON 86,700 (EUR 21675), an increase of 97.94 per cent compared to 2006. Other compulsory measures taken by the President of the NSAPDP were that data controllers had been forced to cease processing personal data (in four cases), and to delete illegally processed personal data (in six cases). In four cases, the NSAPDP ordered a temporary interdiction and temporary suspension of the activity of processing personal data. The 2006 annual report mentions only one case when the NSAPDP notified the prosecutor's office and in its response to an official request filed under the Freedom of Information Law NSAPDP did not mention any information regarding the number of cases notified to the prosecution authorities and their outcome or the number of cases in which the NSAPDP filed a case before the courts of law to defend the rights of persons who suffered from damages as a result of illegal processing of personal data.

[127]. The administrative fines paid under the law are a part of the state budget. Law 677/2001 does not provide for compensation for the persons subject to data processing. The persons who consider themselves victims of illegal data processing or who suffered from damages as a result of data processing can, in theory, file a civil torts complaint with the courts with an action for damages under the general torts clauses, Articles 998-999 of the Civil Code on liability for damages.[75]

[128]. The NSAPDP does not mention any information regarding institutionalised support for data subjects (in the form of legal advice or representation in court proceedings)[76] and there are no groups (public or private) performing these functions, which means that in practice the data subject who has suffered from illegal data processing carries the burden and risk of the legal procedures.

## 4.2. Protection of personal data in the field of employment

[129]. There are no particular legal provisions on the protection of personal data controlled and processed in the context of employment.

[130]. In 2007, the NSAPDP reported prioritising recruitment in labour relations in its investigations.[77] Romania/Lege 156/2000 regarding the protection of Romanian citizens who work abroad provides that the mediation activities related to hiring Romanian citizens abroad may be performed by legal persons having as core business recruitment and placement of workforce abroad. NSAPDP found that within the procedures regarding the selection and the placement of the workforce, such agencies perform operations which involve the collection, use and disclosure to third parties of personal data and that there were also cases in which personal data was obtained from other

75 Romania/Codul Civil, Articles 998-999.

76 The Frequently Asked Questions section of the NSAPDP website targets mostly data controllers, available at: http://www.dataprotection.ro/index.jsp?page=faq&lang=en (03.01.2009). See also the draft form of complaint provided for data subjects, which does not mention the possibility of compensation obtained in a court case or the possibility to receive legal representation from the NSAPDP, http://www.dataprotection.ro/?page=cerere&lang=ro (07.01.2009).

77 NSAPDP 2007 report mentions: 'there were performed 46 investigations with data controllers who carry out activities which involve the selection and the placement of the workforce, which revealed the fact that the collection of the personal data of the persons concerned (individuals in search of a job) is performed by using standard forms. A part of the recruitment companies have their own resume form, others receive resumes in the form chosen by the concerned individual, existing thus the possibility of collecting personal data which may be excessive with respect to the requirements of contract partners.'

specialised data controllers (specialised websites). The NSAPDP investigations resulted in the conclusion that some data controllers in the field of selection and of placement of the workforce did not inform the individuals concerned regarding the rights provided by Law 677/2001. As for maintaining privacy in personal data processing, the NSAPDP found that the labour contracts of the employees of the companies working in the field contain general nondisclosure clauses.[78]

# 5. Rights Awareness

[131]. The NSAPDP reports that there are no studies assessing the level of knowledge regarding data protection legislation carried out by the institution or by any of its partners.[79]

[132]. Under the chapter awareness raising, the NSAPDP reports in 2006 the following activities: publishing over 5,000 brochures, creating its website, organising 13 seminars for data controllers, 10 seminars for representatives of local public authorities, establishing a hotline (981 for inquiries), carrying out audiences (908), issuing 27 press releases. The 2007 annual report mentions various conferences, as well as a public debate with *Consiliul Superior al Magistraturii* [the Superior Council of Magistracy], organised by the NSAPDP and 15 meetings organised in the country with data controllers with the participation of the representatives of the public local authorities, of the local services of the ministries and of the business companies, tourism agencies. Also for 2007, the NSAPDP reported disseminating over 5,000 brochures regarding its main attributions and over 7,000 flyers regarding the notion of personal data and the rights of the citizens related to the field of the protection of data, receiving 240 inquiries regarding the enforcement of Law 677/2001 and issuing 25 press releases.

# 6. Analysis of deficiencies

[133]. Different types of deficiencies are identified as barriers in effective data protection: the main deficiency is the lack of awareness regarding

[78] Romania/Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, *Raport Anual 2007*, p.44 , available at: http://www.dataprotection.ro/servlet/ViewDocument?id=428 (29.12.2008).

[79] Response of National Supervisory Authority for the Protection of Personal Data No. 0017780 (10.12.2008) to request filed on 20.11.2008 repeated on 10.12.2008, on file with FRALEX expert.

the legal framework and the role of the Supervisory Authority but there are also deficiencies related to an incomplete or inadequate legal framework in need of legislative amendment, failure to enforce existing legal provisions or deficient interpretation of legal provisions which lead to infringements of fundamental rights.

[134]. The biggest challenge remains that defence and intelligence services are exempted from the application of the law and further amendments of the legislation should be taken in consideration in this regard, eventually in the context of future amendments of legislation regarding security.

[135]. In terms of deficiencies in the enforcement of Law 677/2001, not all relevant data controllers issued methodologies, internal regulations, etc. in their own field of activity, with the endorsement of the NSAPDP. Furthermore, there is no specific obligation to appoint a data protection officer with a relevant level of expertise. The proactive engagement of the NSAPDP in monitoring and encouraging the data controllers to adopt internal standards and procedures depends also on the availability of resources.

[136]. While theoretically the transposition of the acquis is complete as the Romanian legal framework is merely a translation of European standards, the law lacks connectivity with the rest of the Romanian legal framework and it remains isolated from other relevant pieces of legislation with which it should be correlated. For example, although the Romanian Constitutional Court analysed under *a priori* constitutional review the amendments to the procedure of verifying the wealth of certain categories of dignitaries and declared this procedure unconstitutional, the Court did not assess some of the provisions of Romania/Lege 115/1996 on declaring and controlling the wealth of dignitaries, magistrates, some persons in leadership positions and civil servants which are contested for infringing the right to privacy and the principles of protection of personal data.[80]

[137]. Art. 3 of Law 115/1996 provides that 'the statement regarding the wealth will be done in writing and engage personal liability and it includes the goods belonging to the subject, the goods acquired during the marriage together with the spouse and those in co-proprietorship, as well as the goods of the children who are under the responsibility of

[80] Romania/Curtea Constituțională/ Decizia 453/2008 (16.04.2008) asupra sesizarii de neconstitutionalitate a dispozitiilor Legii pentru modificarea Legii nr.115/1996 pentru declararea si controlul averii demnitarilor, magistratilor, a unor persoane cu functii de conducere si de control si a functionarilor publici, Decision on the objection as to the constitutionality of the provisions amending Law 115/1996 on the obligation of dignitaries, magistrates, persons in leadership positions and civil servants to declare their wealth and the control of such wealth, available at: www.ccr.ro (10.01.2009).

the subject.' The enforcement of this provision, particularly the obligation to declare the income of the spouse, was contested by the Superior Council of Magistracy which asked the Ombudsman to file a petition with the Constitutional Court invoking the right to privacy and the right to the protection of personal data as the statements of wealth are made public on the websites of the institutions.[81]

## 6.1. Inadequate legislation

[138]. In 2003, the Government issued its Decision 952[82] which established *Sistemul Informaţional Integrat* [Integrated Informational System (IIS)] as a database aimed at centralising the information held by all public institutions on natural and legal persons. IIS was perceived as having the potential of becoming 'the electronic arm of the Romanian Intelligence Service' given the lack of clear procedural guarantees and control mechanisms to prevent potential abuse.[83] Subsequently, the *Asociaţia pentru Apărarea Drepturilor Omului-Comitetul Helsinki* [Romanian Helsinki Committee (APADOR-CH)] initiated an administrative complaint against de Governmental Decision arguing that it was illegal and violated the right to privacy, and requesting for the decision to be annulled. APADOR-CH lost the case and the appeal.[84] The NSAPDP did not engage in the debate, did not issue any opinion or and did not make any comment recommendation regarding IIS.

[139]. Romania/Lege 76/2008 regarding the organising and the functioning of the National System of Genetic Judicial Data came under the criticism of experts, particularly following the decision of the

[81] Position of the Romanian Superior Council of Magistracy, available at: http://www.realitatea.net/scandalos-lidia-barbulescu-vrea-sa-declare-averile-demnitarilor-secrete_359917.html (03.01.2009).

[82] Romania/ Hotărâre de Guvern 952 (14.08.2003) privind aprobarea normelor şi procedurilor în vederea operaţionalizării Sistemului informatic integrat, componentă a Sistemului Electronic Naţional (Governmental Decision regarding the approval of the norms and of the procedures required to operationalise the Integrated Informatic System, part of the National Electronic System).

[83] Manuela Stefanescu from the Romanian Helsinki Committee cited by Evenimentul Zilei, 29.09.2003: 'We do not know to whom this integrated information system is subordinated; we do not know to whom it is of use, and it is extremely dangerous to create a superpower, especially without the slightest guarantee that the personal data will be protected. . . . Furthermore, natural and legal persons lack any means of controlling the way in which the data centralized in this mammoth system will be used. Article available at: http//www.evz.ro/english/?news_id=132980. See also APADOR-CH, *2003 Annual Activity Report* available at: http://www.apador.org/rapoarte/anuale/report2003.htm (04.01.2009).

[84] APADOR-CH, Cases, case no.8: *APADOR-CH a solicitat revocarea/anularea Hotărârii nr.952 din 14.08.2003 privind aprobarea normelor şi procedurilor în vederea operaţionalizării Sistemului informatic integrat, componentă a Sistemului Electronic Naţiona*l, available at: http://www.apador.org/ (08.01.2009).

European Court of Human Rights in ECHR/S. and Marper v. the United Kingdom as, in case of persons who had not been convicted, the deletion of the data registered is not done by default (in observance of the presumption of innocence) and it can be done only 'on grounds of the ordinance or of the order issued by the prosecutor, or, depending on the circumstances, on grounds of a judicial decision, if in such a document the measure of deletion is expressly mentioned.'[85]

[140]. On 31 December 2006, without any public consultation, the Government adopted an Emergency Ordinance 131/2006, amending the law establishing the department mandated to fight organised crime and terrorism, Romania/Lege508/2004 establishing and organising the Department for Investigations on Organised Crime and Terrorism (DIOCT).[86] The document came under the criticism of civil society[87] as it gave more powers to the Prosecutors' DIOCT and allowed prosecutors to monitor traffic data from electronic communications providers without a warrant issued by the judge. The text was criticised, in particular because of Art. 16(1) sub-paragraph C providing for access to information systems when there are serious leads regarding criminal deeds falling under the competency of DIOCT, a provision conflicting with those of Directive 2002/58/EC and Directive 2006/24/EC.

## 6.2. Incomplete legal framework

[141]. The Romanian legal framework on data protection does not mention 'privacy,' the right to privacy being protected only by the Romanian Constitution.

[142]. The Romanian legislation does not apply to national defence and security services, whose data processing are not falling under the incidence of Law 677/2001 according to Art. 2(7).

[143]. The enforcement of Law 677/2001 in the case of community public services for the evidence of persons needs further guidance as even the NSAPDP finds in its reports that 'the data controller has been non-

[85] Bogdan Manolea, *Marper vs Marea Britanie: CEDO condamna pastrarea datelor personale in mod sistematic*, available at: http://www.legi-internet.ro/blogs/index.php (06.01.2009).

[86] Romania/Lege508/2004 privind înfiinţarea, organizarea şi funcţionarea în cadrul Ministerului Public a Direcţiei de Investigare a Infracţiunilor de Criminalitate Organizată şi Terorism (31.12.2006).

[87] SoJust, *Ordonanta DIICOT - interceptare comunicatii, perchezitii sisteme informatice* (23.01.2007) available at: http://www.sojust.ro/comunicate-de-presa/ordonanta-diicot-interceptare-comunicatii-perchezitii-sisteme-informatice.html(08.01.2009).

unitarily declared by the local council, mayor, Town hall or the office for the evidence of the persons' records in question.' [88]This means that in practice it is unclear which particular authority is the data controller responsible for processing requests in relation to identification documents, regular passports, driving licences or registration numbers.

## 6.3. Non-enforcement of legal provisions

[144]. Though Law 506/2004 also sanctions spam and states that the use of electronic mail for the purposes of direct marketing without the prior explicit consent of the user will be sanctioned with a fine between ROL 50 million (approx. EUR 1,250) and ROL 1 billion (approx. EUR 25,000), the NSAPDP does not report any case of investigation or sanction in this area.[89]

## 6.4. Problematic interpretation of existing legal provisions

[145]. The legal framework on data protection was interpreted at times as conflicting with the legislation regarding free access to public information as laid down in Romania/Lege 544/2001, particularly when the mass-media or NGOs requested information which is considered as public interest information but contains also personal information. Law 544/2001 stipulates that information regarding the personal data of the citizen may become public only to the extent to which it affects the capacity to perform in a public position but the various courts interpreted this provision differently. The position of the NSAPDP was that 'personal data may be disclosed to third parties with the consent of the person concerned, and without his/her consent to the extent to which processing is necessary in view of fulfilling a legal obligation of the data controller, when the objective is the fulfilment of measures of public interest or when they are already part of publicly accessible documents.'

[88] Romania/Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, *Raport Anual 2006*, available at: http://www.dataprotection.ro/servlet/ViewDocument?id=427 (29.12.2008).

[89] For companies with a turnover that exceeds ROL 50 billion, the fine could amount to as much as 2% of revenues. Other provisions regulate the subscribers' right to choose not to be included in printed or electronic directories and to consent to use of personal data in the directory. Companies that infringe this right are subject to a fine between ROL 300 million (approx. EUR 7,500) and ROL 1 billion (approx. EUR 25,000).

# 7. Good practices

[146]. The NSAPDP established an online system for registration of notifications in order to increase the efficiency of its work.

[147]. In order to enhance effectiveness, the NSAPDP signed cooperation agreements with public institutions with attribution of investigation in fields of activity related to data protection: the National Authority for Consumer's Protection, the General Inspectorate of the Romanian Police, the Financial Guard, the Ministry of Communications and Information Technology, and the National Office of Trade Registry.

[148]. In 2007, the General Inspectorate of the Romanian Police signed a collaboration protocol[90] with the following objectives:

a. designate persons responsible for the protection of data at the level of police units and train them within courses organised by the General Inspectorate, taught by specialists of the NSAPDP;

b. organise trainings at the level of the General Inspectorate and at the level of the administration of the police inspectorates, through a course held by the NSAPDP on the video equipment belonging to the police and subsequently, the training of other members of the administrative staff of the inspectorates;

c. develop together a campaign for informing the public.

# 8. Miscellaneous

[149]. The National Authority for the Supervision of Personal Data Processing argues that a future revision of the Constitution should consider mentioning the right of personal data protection in the category of fundamental rights.[91]

[150]. Public authorities invoke Article 7(1) of Law 677/2001 prohibiting 'the use of personal data regarding the racial or ethnic origin, political, religious, philosophical or similar opinion, membership of unions, as well as private data regarding health status or sexual life' when they

[90] Romania/Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, *Raport Anual 2007*, available at: http://www.dataprotection.ro/servlet/ViewDocument?id=428 (29.12.2008).

[91] Romania/Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal, *Raport Anual 2006*, p. 5, available at: http://www.dataprotection.ro/servlet/ViewDocument?id=427 (29.12.2008).

are requested to provide information needed for drafting effective legislation and public policies responding to the needs of vulnerable groups: Roma, women, sexual minorities etc. Art. 7(2) allows for specific exemptions in processing such special categories of data but fails to provide an adequate translation of Art. 8(4) of Directive 95/46/EC which provides that 'subject to the provision of suitable safeguards, Member States for reasons of substantial public interest, may lay down exemptions in addition to those laid down in para. 2 either by national law or by decision of the supervisory authority.' As this limitation was identified as a deterrent to effective data-gathering and policy-making in the case of women,[92] Roma[93] or sexual minorities[94] it would be advisable for the NSAPDP to issue an Order and subsequent methodological norms allowing data-collecting for statistical purposes, embedding adequate safeguards in the processing of such sensitive data.

[151]. There is a further need to revise the legislative framework to make sure that it observes the provisions of Law 677/2001. For example, religion and nationality are still mentioned in the application forms for identity cards or for marriage certificates even if Government Decision 113/1997 concerning the content, update and trade of data in the permanent registry of persons' evidence had been repealed by Government Decision no. 1375/2006 and Law 119/1996 regarding the marital status documents is enforced following a Methodology from 1997 concerning its unitary application.

[152]. The *Consiliul Superior al Magistraturii* [Superior Council of Magistracy (SCM)] proposed to the commission in charge of the revision of the Code of Civil Procedure, amendments meant to ensure the right to privacy, in accordance with Law 677/2001. In this regard, the SCM proposed for all judicial acts to be communicated to the parties in a closed envelope and, in case they are sent via postal services, to send them as a registered letter with a receipt for delivery (Art. 92 of the draft Code of Civil Procedure).[95]

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92 See, CEDAW/C/ROM/CO/6, Concluding comments of the Committee on the Elimination of Discrimination against Women, Romania, June 2006.

93 DecadeWatch : *Roma activists assess the progress of the Decade of Roma Inclusion 2005-2006*, available at: http://www.romadecade.org/index.php?content=6, (10.10.2007).

94 FRALEX. *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation – Romania*, available at: http://fra.europa.eu/fra/material/pub/comparativestudy/FRA-hdgso-NR_RO.pdf (09.01.2009).

95 Consiliul Superior al Magistraturii, available at: http://www.avocatnet.ro/content/articles/id_12528/Propunere-CSM-Protectie-mai-mare-pentru-datele-cu-caracter-personal-in-Codul-de-procedura-civila.html (06.01.2009).

# Annexes

## Annex 1 – Tables and Statistics

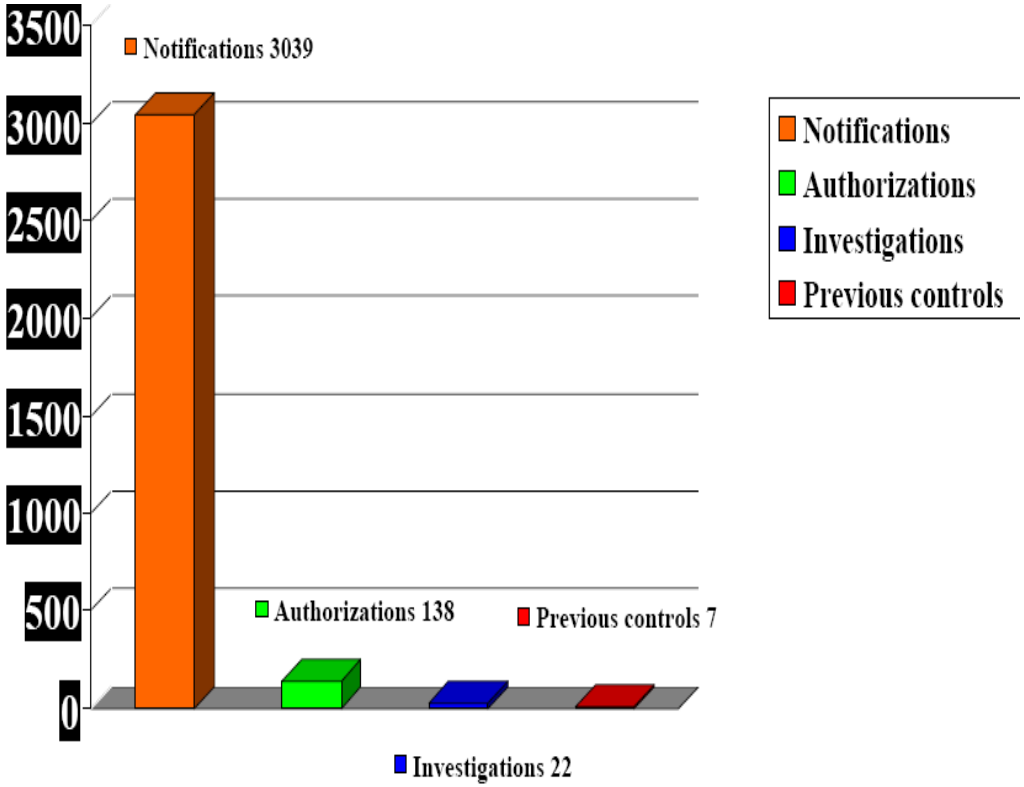
| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|---|---|---|---|---|---|---|---|---|
| Budget of data protection authority | - | - | - | - | - | - | 4,651,000 ROL (Euro 132,130.682) of which 4,603,390 ROL (Euro 130,778.125) actually used | 3,884,000 ROL (Euro 116,381.506), out of which 3,809,270ROL (Euro 114,142.271 ) effectively used |
| Staff of data protection authority | - | - | - | - | - | 51 | 52 (including dignitaries) | 52 (including dignitaries) |
| Number of procedures (investigations, audits etc.) initiated by data protection authority at own initiative | - | - | - | - | - | - | Not available | Not available |
| Number of data protection registrations | - | - | - | - | - | - | 1439 | 4269 |
| Number of data protection approval procedures | - | - | - | - | - | - | - | - |
| Number of complaints received by data protection authority | - | - | - | - | - | - | 51 | 51 |
| Number of complaints upheld by data protection authority | - | - | - | - | - | - | Not available | Not available |

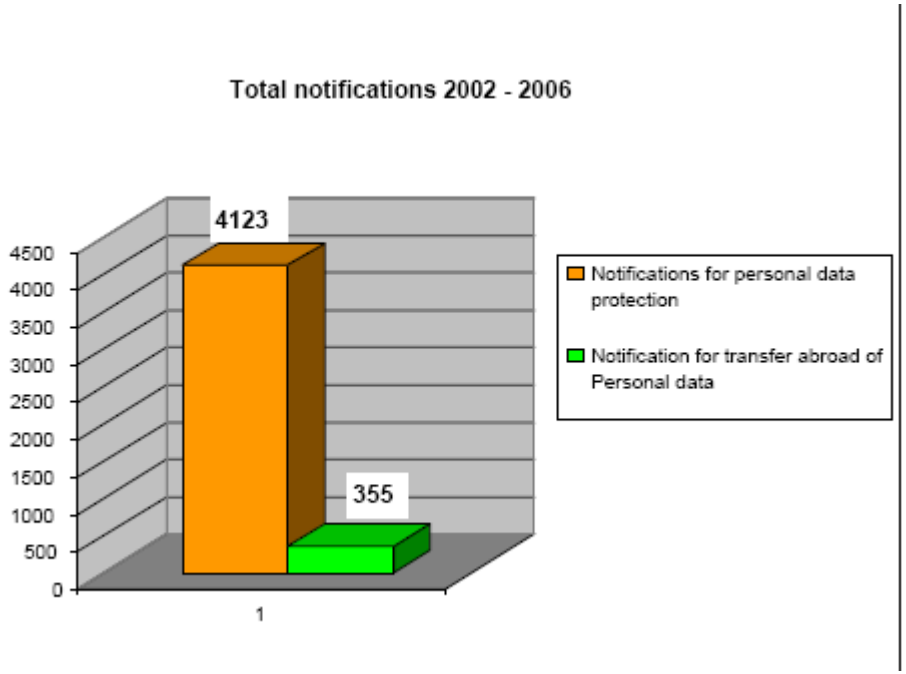
| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Follow up activities of data protection authority, once problems were established (please disaggregate according to type of follow up activity: settlement, warning issued, opinion issued, sanction issued etc.) | - | - | - | - | - | - | 6 | Not available |
| Sanctions and/or compensation payments in data protection cases applied by the Romanian data protection authority, in your country | - | - | - | - | - | - | 65 warnings and 31 fines | 64 warning and 95 fines |
| Range of sanctions and/or compensation in your country (Please disaggregate according to type of sanction/compensation) | | | | | | | Range of sanctions not available<br>Total amount of ROL 43.800 | Range of sanctions not available<br>Total amount of ROL 86,700 |

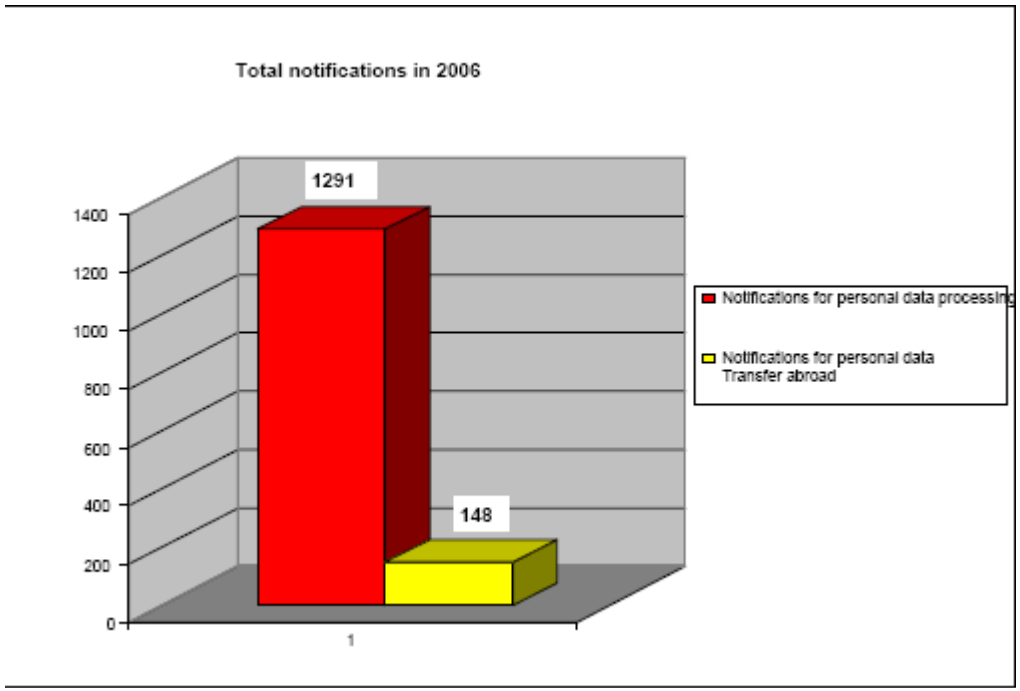
# Any other tables or statistics relevant for assessment of effectiveness of data protection, where available

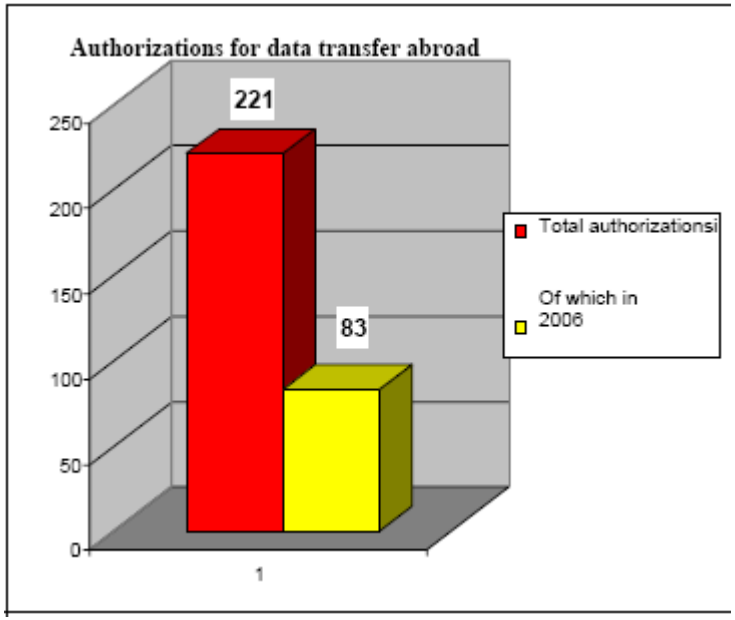
## 2006 relevant graphs

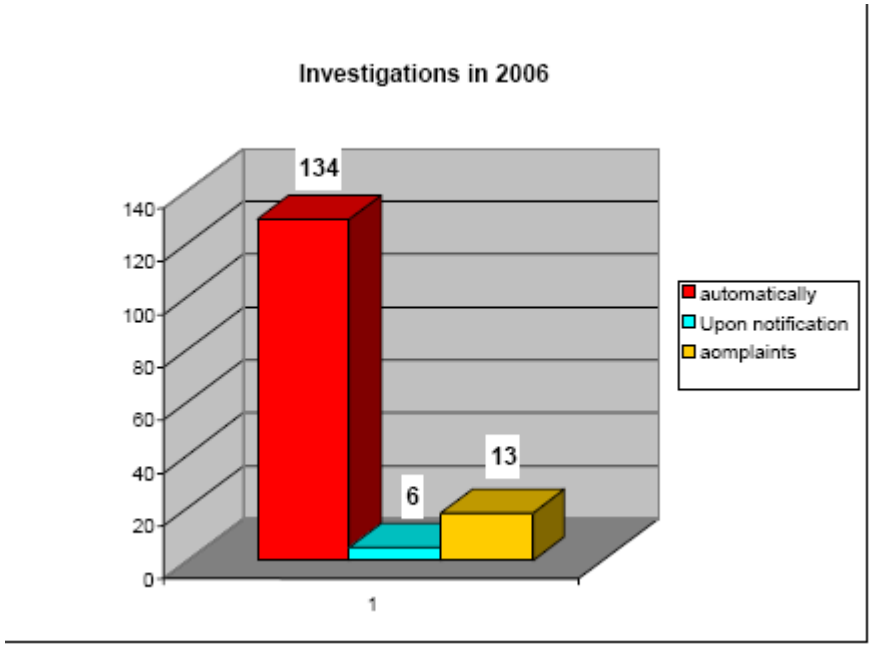
[153]. Source: Romania/Autoritatea Naţională de Supraveghere a Prelucrării Datelor cu Caracter Personal, *Raport Anual 2006*, available at: http://www.dataprotection.ro/servlet/ViewDocument?id=427 (29.12.2008)

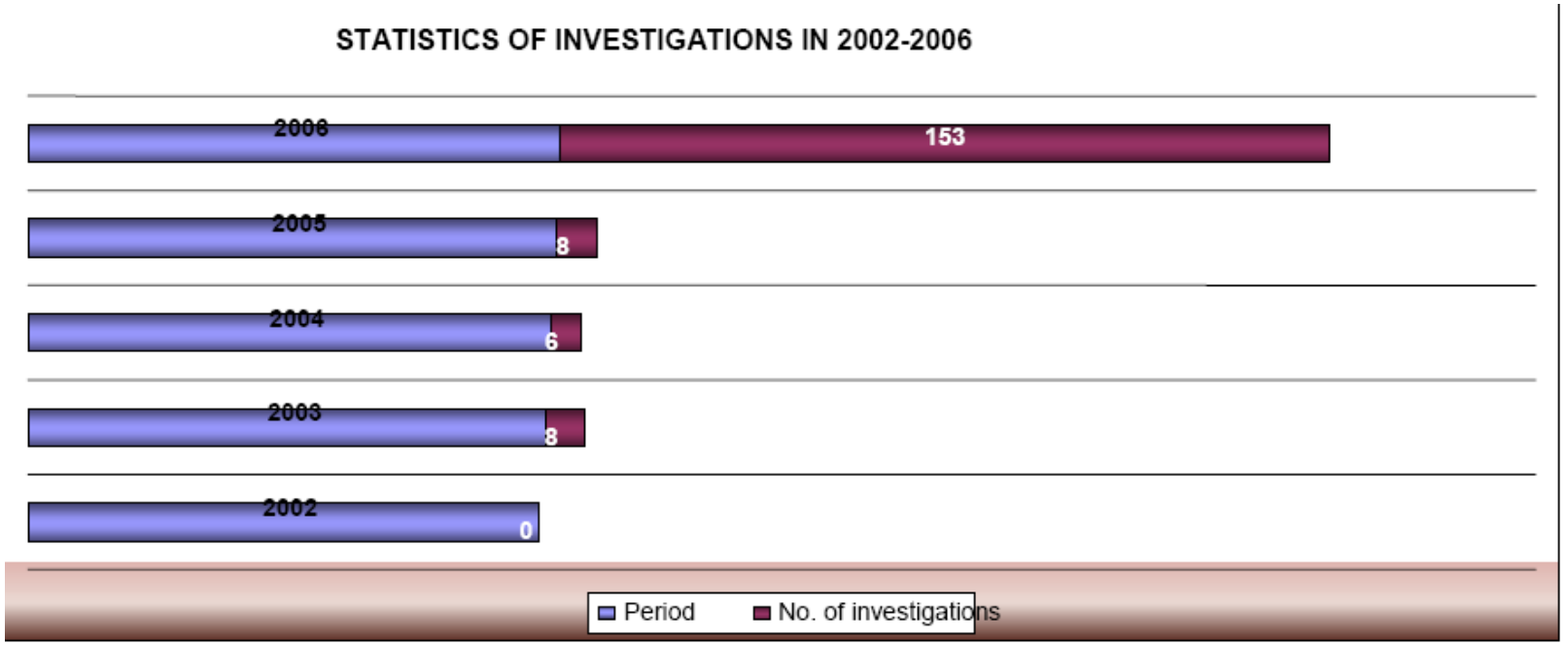


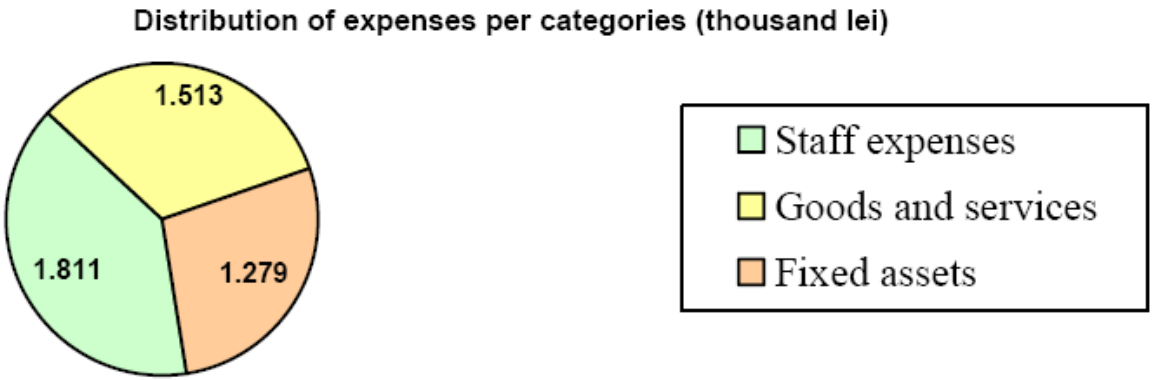






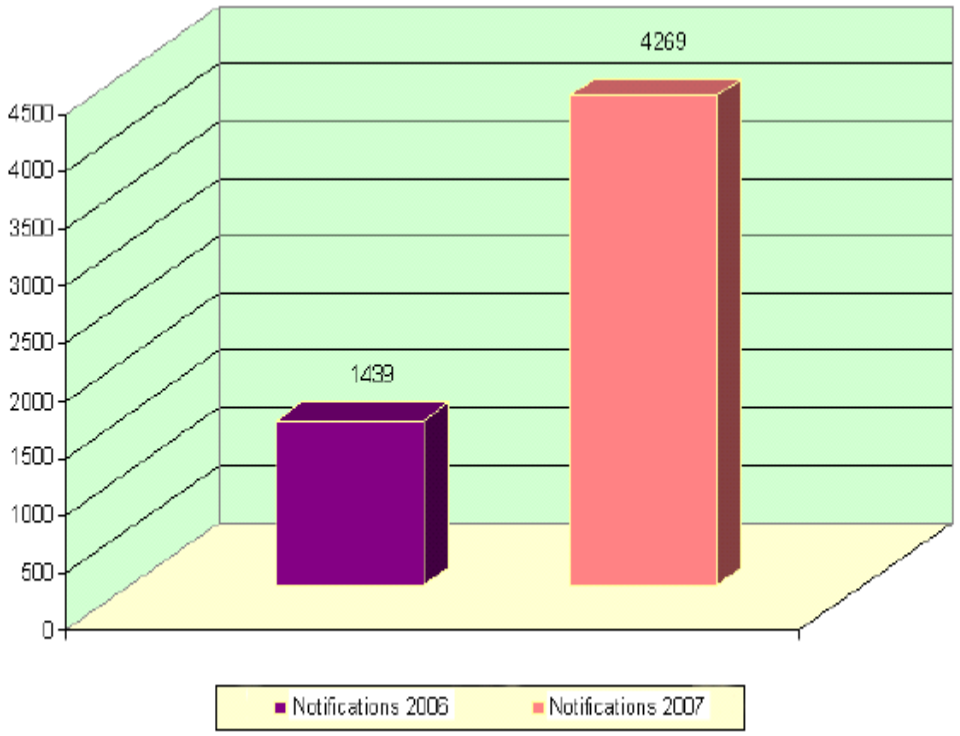


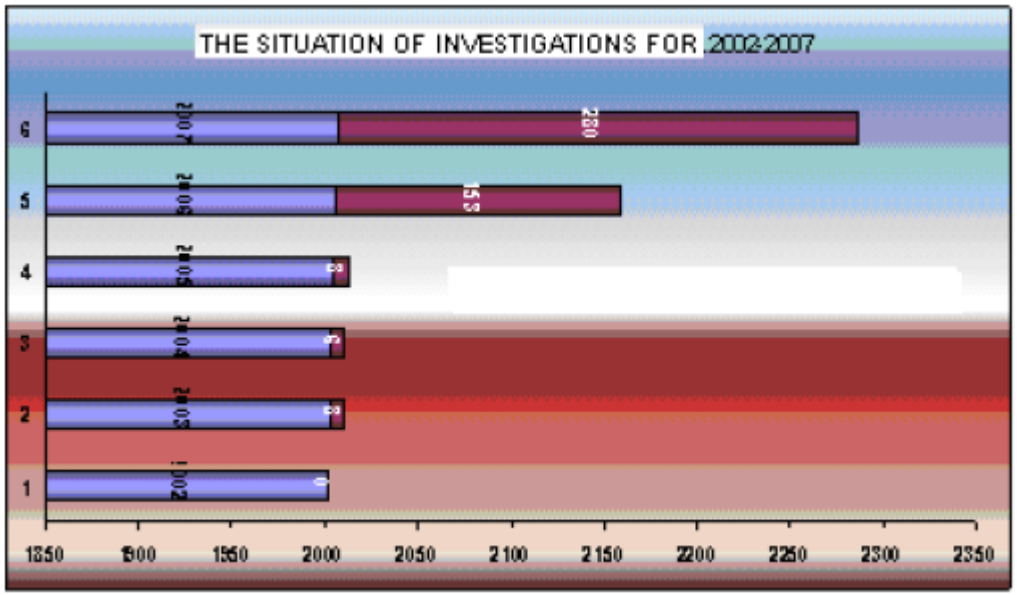


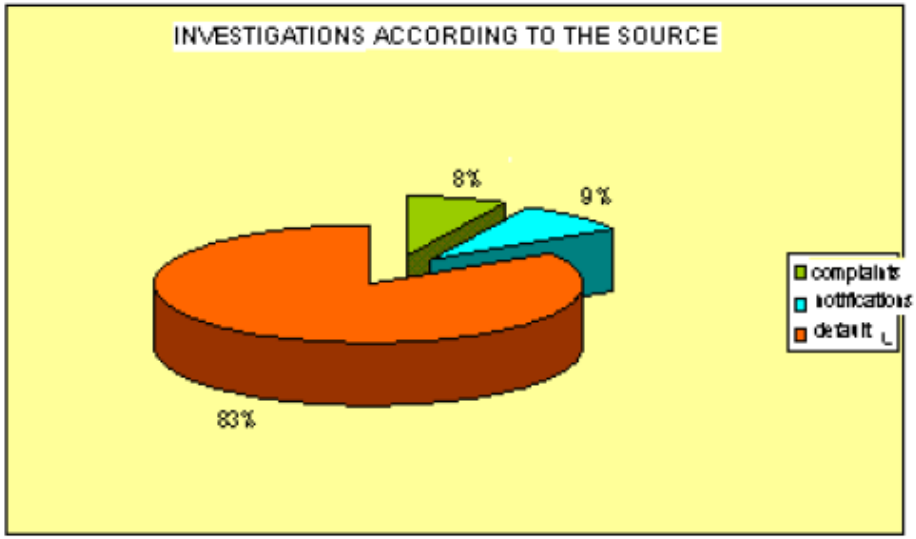


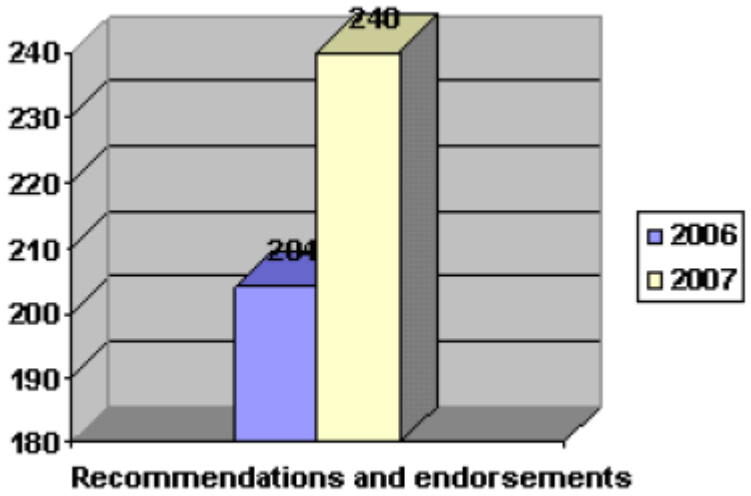

# 2007 relevant graphs

[154]. Source: Romania/Autoritatea Naţională de Supraveghere a Prelucrării Datelor cu Caracter Personal, *Raport Anual 2007*, available at: http://www.dataprotection.ro/servlet/ViewDocument?id=428 (29.12.2008)

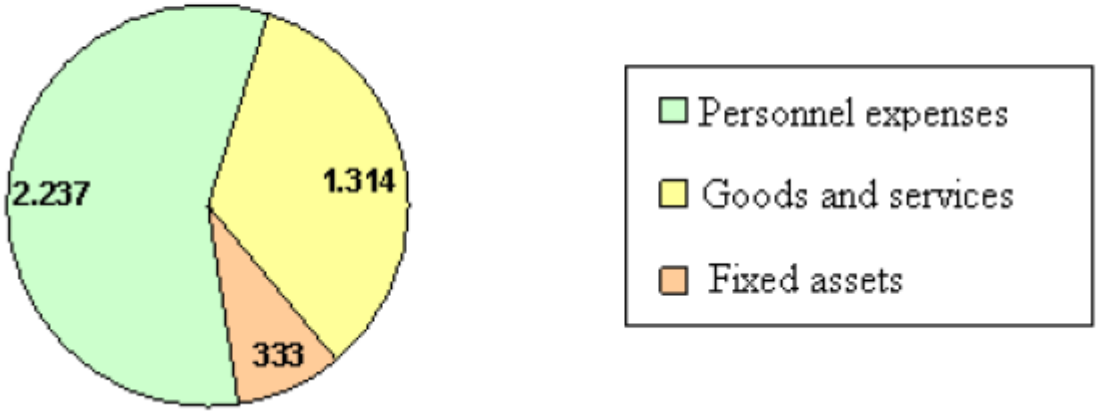








**Distribution of the expenses according to items (thousands of lei)**



# Annex 2 – Case Law

[155]. When requested to provide exemplary cases from its practice, the NSAPDP indicated the cases referred to in its Annual Reports. Response of the Romanian National Supervisory Authority for the Protection of Personal Data No. 0017780 (10.12.2008) to request filed on 20.11.2008 repeated on 10.12.2008, on file with FRALEX expert.

| | |
|---|---|
| **Case title** | Rotaru v. Romania |
| **Decision date** | 4.05.2000 |
| **Reference details** (reference number; type and title of court/body; in original language and English [official translation, if available]) | European Court of Human Rights, *Rotaru v. Romania*, application no. 28341/95 |
| **Key facts of the case** (max. 500 chars) | On the basis of Romania/Decret 118/1990 granting certain rights to those who had been persecuted by the Communist regime and provided that they were not engaged in Fascist activities, the applicant initiated proceedings seeking to have his 1948 one year long prison sentence taken into account in the calculation of his length of service at work. He also sought payment of the corresponding retirement payment. In its defence, the Ministry of the Interior submitted to the court a letter of 19.12.1990 from the Romanian Intelligence Service stating that according to its records the applicant studied in a different faculty, was a member of a legionnaire (fascist) type association and that he does not have criminal records. The applicant brought proceedings against the RIS, stating that he had never been a member of the Romanian legionnaire movement, that he had not been a student in the Faculty of Sciences at Iaşi University but in the Faculty of Law and that some of the other information provided by the RIS in its letter was false and defamatory. Under the Civil Code provisions on liability in torts he claimed damages from the RIS for the non-pecuniary damage he had sustained. He also sought an order, without relying on any particular legal provision, that the RIS should amend or destroy the file containing the information on his supposed legionnaire past. His action was dismissed and the appeals were rejected as ill-founded with the appeal court stating that 'it was apparent that the judicial authorities have no jurisdiction to destroy or amend the information in the letter written by the RIS, which is merely the depositary of the former State security services' |

| | |
|---|---|
| | archives.' The applicant complained that the lack of any remedy before a national authority that could rule on his application for destruction of the file containing information about him and amendment of the inaccurate information was also contrary to Article 13 of the ECHR. |
| **Main reasoning/argumentation** (max. 500 chars) | The Court found that 'both the storing of that information and the use of it, which were coupled with a refusal to allow the applicant an opportunity to refute it, amounted to interference with his right to respect for family life as guaranteed by Article 8§1.' The Court noted that neither the provisions relied on by the Romanian Government nor any other provisions of that law make it possible to challenge the holding, by agents of the State, of information on a person's private life or the truth of such information. The supervisory machinery established by Romanian legal provisions relate only to the disclosure of information about the identity of some of the Securitate's collaborators and agents. |
| **Key issues (concepts, interpretations) clarified by the case** (max. 500 chars) | The Court found that 'the domestic law rules providing that information affecting national security may be gathered, recorded and archived in secret files do not afford a sufficient degree of foreseeability. The holding and use by the RIS of information on the applicant's private life were therefore not "in accordance with the law", so that Article 8 was violated.' |
| **Results (sanctions) and key consequences or implications of the case** (max. 500 chars) | Found violations of Art. 8, 13 and 6(1) and awarded 50,000 French francs in respect of non-pecuniary damage and 13,450 French francs for costs and expenses, less 9,759 French francs, 72 centimes, to be converted into Romanian lei at the rate applicable at the date of settlement;<br>The legislation deemed as infringing the provisions of the European Convention has not been amended. |
| **Proposal of key words for data base** | Storing of private data by secret services, right to object and obtain corrections of recordings, ECHR jurisprudence |

| | |
|---|---|
| **Case title** | Illegal disclosure of personal data |
| **Decision date** | 2006 |

| | |
|---|---|
| **Reference details** | National Authority for the Supervision of Personal Data Processing – case cited in the 2006 Annual Report of the NSAPDP. |
| **Key facts of the case** (max. 500 chars) | Complaint filed by individual after the county police inspectorate provided information concerning the weapons and ammunition held by the applicant, to a local daily paper, on grounds of the law regarding free access to information of public interest. |
| **Main reasoning/argumentation** (max. 500 chars) | According to Law no. 295/2004 concerning the weapon and ammunition regime, the recordings concerning the lethal and non-lethal weapons and ammunitions are exempted from the free access to information and belong to the category of classified information.<br>Law 544/2001 concerning the free access to information of public interest excludes the disclosure of personal data and of the information classified. |
| **Key issues (concepts, interpretations) clarified by the case** (max. 500 chars) | Relation between protection of personal data and free access to public information. |
| **Results (sanctions) and key consequences or implications of the case** (max. 500 chars) | As the NSAPDP considered that the case qualifies as a criminal case, it notified the competent prosecutor office about the deeds reported by the solicitor. The NSAPDP does not provide information regarding the follow up of the case. |
| **Proposal of key words for data base** | Illegal disclosure of personal data using FOIA provisions; regime of information regarding ammunitions |

| | |
|---|---|
| **Case title** | Infringement of the right to opposition in relation to direct marketing |
| **Decision date** | 2006 |
| **Reference details** (reference number; type and title of court/body; in original language and English [official translation, if available]) | National Authority for the Supervision of Personal Data Processing, case cited by the NSAPDP 2006 annual report |
| **Key facts of the case** (max. 500 chars) | The data subject objected to receiving on his personal address an advertisement on behalf of an insurance company from a bank where he had a loan account. Upon the subscription of the Loan Agreement with the Bank in question, the applicant had clearly expressed his opposition in relation with the reception of commercial offers. |
| **Main reasoning/argumentation** (max. 500 chars) | According to Art. 15 of Law 677/2001 the data subject may express at any time and for free their right to opposition towards the processing of personal data for marketing purposes, both in the name of the data controller and in the name of third parties. |
| **Key issues (concepts, interpretations) clarified by the case** (max. 500 chars) | Application of the right to opposition in the context of a prior contractual relation between the data subject and the data controller discussed by the NSAPDP. |
| **Results (sanctions) and key consequences or implications of the case** (max. 500 chars) | The Bank was obligated to notify the solicitor about the accurate response to his petition by which the latter exercised his right to opposition. |
| **Proposal of key words for data base** | Right to opposition |

| | |
|---|---|
| **Case title** | Processing of personal data without the consent, for purposes of marketing |
| **Decision date** | 2006 |
| **Reference details** | National Authority for the Supervision of Personal Data Processing – case cited in the 2006 annual report |
| **Key facts of the case** (max. 500 chars) | Complaint against a trade company specialised in distance marketing which collected and used his personal data without his consent, within a promotion campaign of own products. |
| **Main reasoning/argumentation** (max. 500 chars) | According to Art. 5(1) of Law 677/2001, the processing of personal data is permitted, as a rule, only on ground of express and non-equivocal consent of the data subject. In the same way, the subsequent use of the data in other purposes is permitted only with the consent of the person in question, according to art. 6 of Law 677/2001.<br>For the solution of the complaint, the NSAPDP organised an investigation at the registered office of the data controller, though it was impossible to identify the real office of the company in question. The NSAPDP requested the support of the Financial Guard. On basis of this information, it was possible to contact and interrogate the former marketing director, taking into account the fact that the activities of the accused company had been suspended for a period of three years. From the investigation it resulted that the database was transferred to another company having the former marketing director as administrator. |
| **Key issues (concepts, interpretations) clarified by the case** (max. 500 chars) | Transfer of personal data to a third party. |
| **Results (sanctions) and key consequences or implications of the case** (max. 500 chars) | Prosecutor informed due to the criminal nature of the case. |
| **Proposal of key words for data base** | Illegal transfer of data to third parties. |

| | |
|---|---|
| **Case title** | Decision no. 1188/2007 |
| **Decision date** | 2007 |
| **Reference details** | *Inalta Curte de Casatie si Justitie* [High Court of Cassation and Justice], Decision no. 1188/2007 |
| **Key facts of the case** (max. 500 chars) | A data controller sanctioned by the NSAPDP appealed against the decision arguing that it contradicts the general law on misdemeanours. |
| **Main reasoning/argumentation** (max. 500 chars) | High Court of Cassation and Justice decided irrevocably that: 'Law 677/2001, as a special law, has provisions which derogate from common law in the field of contraventions, respectively the Ordinance of the Government 2/2001. The issuance of an ulterior decision to the drawing up of the contraventional offence report is not contrary to Law 677/2001, because art. 3 par. 2 and 5 of Law 102/2005 which amends and completes Law 677/2001 provides that the finding and the sanctioning of the contraventions are carried out by the Supervisory Authority through the President of the Authority, who issues decisions by exerting his attributions.' |
| **Key issues (concepts, interpretations) clarified by the case** (max. 500 chars) | The case discussed the relationship between the general law and Law 677/2001 and the proceedings established under Law 102/2005. |
| **Results (sanctions) and key consequences or implications of the case** (max. 500 chars) | The Court maintained the status of Law 677/2001 as lex specialis. |
| **Proposal of key words for data base** | Legal proceedings under the data protection legislation. |

| | |
|---|---|
| **Case title** | APADOR-CH v. the Romanian Government |

| | |
|---|---|
| **Decision date** | 05.04.2005 |
| **Reference details** | Decision 626/2005, *Curtea de Apel Bucuresti* |
| **Key facts of the case** (max. 500 chars) | The Governmental Decision 952/2003 established an Integrated Informational System (IIS) as a database aimed to centralise the information held by all public institutions on natural and legal persons. IIS was perceived as having the potential of becoming 'the electronic arm of the Romanian Intelligence Service.' *Asociaţia pentru Apărarea Drepturilor Omului-Comitetul Helsinki* [Romanian Helsinki Committee (APADOR-CH)] initiated an administrative complaint against the Governmental Decision arguing that it was illegal and violated the right to privacy and requested for the decision to be annulled. |
| **Main reasoning/argumentation** (max. 500 chars) | The Court maintained that the Governmental Decision is legal as it is issued in application of the Law 161/2003 which provided for a National Electronic System. As for the potential of the IIS of infringing the right to privacy, the Court maintained that the Governmental Decision established 'countless restrictive procedures with the very purpose of preserving and protecting the information stored which are meant to eliminate the risk of leaking of information and to prevent interception.' The decision of the court did not assess the implications of the IIS and the proceedings involved and their impact on the right to privacy. |
| **Key issues (concepts, interpretations) clarified by the case** (max. 500 chars) | Right to privacy in the context of centralisation of personal data by an entity which is not under the control of the judicial power |
| **Results (sanctions) and key consequences or implications of the case** (max. 500 chars) | The application of the plaintiffs was rejected and the Governmental Decision was maintained. |
| **Proposal of key words for data base** | Integrated Informatics System |