



Montenegro  
**Personal Data Protection Agency**

**2010 WORK REPORT OF THE AGENCY AND THE STATE OF  
PERSONAL DATA PROTECTION**

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## INTRODUCTION

Personal data protection, with regard to privacy protection, is one of fundamental human rights which is necessary for proper functioning of each democratic society. Basic standards of privacy protection are defined by universal values of international community, as well as agreements, treaties and Conventions that Montenegro has incorporated within its legal system.

Constitution of Montenegro guarantees protection of all human rights and fundamental freedoms envisaged by the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols, and thereby rights to privacy, home and family life.

Each country has legitimate requirements toward its citizens, though, on the other hand, it has obligations towards the same. One of these obligations is to ensure right to privacy regarding personal data protection. The fact that one of important conditions for gaining visa liberalization in Montenegro was adoption of the Personal Data Protection Law and establishment of the Agency as a supervisory body in this area, speaks about the importance of personal data protection. Nowadays, the challenge has grown since the need for data processing, even personal ones, is increasing every day, and on the other hand, development of technological achievements and possibilities is almost unlimited.

Personal Data Protection Law (Official Gazette of the Republic of Montenegro 79/08 and 70/09) ensures respect of the right to privacy with regard to personal data processing. This Law establishes basic principles of personal data protection such as the right to processing, purpose of processing, transfer of data to third countries, data security as well as establishment of an independent supervisory body.

Harmonization of values such as right to privacy and public interest in a democratic society is a task that has not been resolved neither by the members of the family of developed countries and nations to which we aspire.

What is encouraging is the fact that this important issue is given more and more importance every day. We are aware that the situation is not satisfactory, viewed from both formal and factual aspects. We draw this conclusion from the former, short but valuable experience as well as from information gained through active relation of the Agency towards the obligations arising from the Law.

On 10<sup>th</sup> December 2009 the Parliament of Montenegro made a decision on the selection of the Chairman and two members of the Personal Data Protection Agency Council.

Based on the public vacancy notice for the election of Director, at the session held on 21<sup>st</sup> April 2010 the Agency Council appointed Director of the Agency.

In June and August 2010 public vacancy notices for the selection of the following jobs were given: Head of the Supervision Department, two inspectors meeting general conditions, one inspector with knowledge of Albanian language, a legal advisor and two technical secretaries.

Jobs in the Supervision Department were being filled from 1<sup>st</sup> September to 1<sup>st</sup> December 2010.

# 1. GENERAL LEGAL FRAMEWORK

Under general framework regulating personal data protection we mean Constitutional provisions, ratified international agreements and generally accepted rules of international law which are part of internal legal order as well as national legislation. Here, we will list provisions of relevant legal documents referring to the subject matter of the work of Personal Data Protection Agency.

Preamble of the Constitution of Montenegro from 2007 says that the commitments of the citizens of Montenegro are to live in the state in which the basic values are, among others, respect for human rights and liberties, as well as democracy and rule of law.

Article 6 of the Constitution guarantees and protects rights of citizens, proclaims them inviolable and binds each person to respect them.

Article 9 states that the ratified and published international agreements and generally accepted rules of international law make an integral part of the internal legal order, and that they shall have the supremacy over the national legislation and shall be directly applicable when they regulate the relations differently from the internal legislation

Right to privacy is elaborated within the Article 40 based on which each person shall be guaranteed right to respect for his/her private and family life.

Inviolability of the confidentiality of letters, telephone conversations and other means of communication is guaranteed by Article 42. This principle shall be deviated from only on the basis of a court decision, if so required for the purposes of conducting criminal proceedings or for the security of Montenegro.

Personal data protection is guaranteed by Article 43, it prohibits usage of personal data for purposes other than those for which they were collected and it gives right to everyone to be informed about the collected personal data about him or her and the right to court protection in case of abuse.

It is Personal Data Protection Law which was passed in 2008 and amended in 2009 which elaborates the guarantee from the Article 43 of the Constitution of Montenegro.

Apart from these national regulations, part of legal order are European

Convention on Fundamental Rights and Freedoms which was ratified by the State Union of Serbia and Montenegro in 2004 and the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data from 1981 that was ratified in 2005 by the State Union of Serbia and Montenegro. Article 8 of the European Convention on Human Rights, among other things, protects private life and correspondence of an individual. Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data includes basic rules for high quality personal data protection in automatic processing. This actually refers to the minimum standards that states which ratified it have to meet. This Convention is a basis for European Union Directives as well.

We can say that Personal Data Protection Law contains all basic principles of international law, especially with regard to Directive 95/46 of the European Union. However, enough time should be given so to check this statement in practice and whether there is need for possible amendments in order to ensure better application and full compatibility with the mentioned Directive.

At the end, it should be noted that EU Directive which refers to the data protection in the area of electronic communication, Directive 2002/58/EC directs Member States to ensure secrecy of communications and related data on the traffic via public communication network and publicly available electronic communications through national legislation. Conclusion may be drawn from this that Montenegro, though it is still not a member of the European Union, should bring national legislation and practice regarding personal data protection in the traffic at the same level as of this telecommunication contents protection.

As far as national legal framework is concerned, it has existed since the adoption of FRY Constitution in 1992 and Personal Data Protection Law from 1998. However, it should be added that cases regarding protection of this right on this legal basis are not known. This primarily leads to the conclusion not that this right was protected in practice and consequently there was no reason for initiating proceedings, but that citizens were not acquainted with their rights.

Legislation analysis, which could not be done during 2010, will be one of the activities within Twinning Project.

## **2. COMPETENCES AND AUTHORITIES OF THE AGENCY**

### **2.1. Competences**

Personal Data Protection Agency has a status of a legal person, it was established as a supervisory authority in the implementation of provisions of the Personal Data Protection Law. In performing affairs within its scope of work it is autonomous and independent. Agency bodies are Council which has the Chairman and two members and Agency Director. The Parliament of Montenegro appoints Chairman and members of the Council.

The Agency performs supervision of application of personal data protection in accordance with the Law; decides on requests for protection of rights; delivers opinions regarding application of this Law; gives consents with regards to the establishment of personal data filing systems; delivers its opinion in the case of doubt whether a set of personal data is considered a filing system within the meaning of this Law; monitors application of organisational and technical measures for the personal data protection and proposes improvements of such measures; puts forwards proposals and offers recommendations for the improvement of personal data protection; delivers opinions as to whether certain ways of personal data processing represent certain risks for the rights and freedoms of individuals; cooperates with competent bodies authorised for personal data protection in other countries; cooperates with competent state authorities in the process of preparation of regulations regarding personal data protection; puts forward proposals for assessment of constitutionality of laws, that is constitutionality and lawfulness of other regulations and general acts governing the issues of personal data processing and performs other tasks in accordance with the Law.

Agency Council: adopts Rules of the Agency, Statute and Act on Working Posts with the consent of the working body referred to in Article 52, paragraph 2 of the Personal Data Protection Law as well as other acts; draws up annual report and special reports regarding personal data protection; establishes annual work plan and annual report on the work of the Agency; establishes proposals for the financial plan and balance sheet; makes decisions upon request for protection of rights and in other cases following supervision; performs other tasks defined by the Law and Statute of the Agency.

Agency Director: acts on behalf and represents the Agency; organises and leads the Agency, executes decisions of the Agency Council; proposes to the Agency Council work plans, reports on the situation regarding personal data protection; performs other tasks laid down by this Law and Statute.

## **2.2. Authorities**

Agency performs supervision in accordance with the Personal Data Protection Law, through its inspectors authorised for performing supervising activities in accordance with the Internal Act on Working Posts.

Inspection supervision *ex officio* is implemented through performing regular supervision in accordance with Supervision Plan which is adopted on annual or monthly basis at the Agency level, as well as extraordinary supervision which is performed upon request for the protection of rights of natural persons. Each person can submit initiative for starting supervision proceedings.

Inspector has the right to access personal data in the personal data filing systems regardless of the fact whether records on these filing systems are kept in the Register, as well as right to access papers and other documents regarding personal data processing and right to access means of electronic processing of personal data.

By decision, during supervision, the Agency is authorised to: order that the irregularities in personal data processing be eliminated within the certain time period; temporarily prohibit personal data processing if it was conducted contradictory to the provisions of the Law; order erasure of personal data collected without legal grounds; impose a ban on transferring personal data out of borders of Montenegro or enabling usage of personal data contradictory to the provisions of the Law; impose a ban on entrusting of personal data processing activities where the processor of personal data does not meet requirements regarding personal data protection, or where the entrusting of such tasks was carried out in contravention to the provisions of this Law.

These authorities provide realistic assumption that the Agency deals properly with personal data protection, and through other resolutions independence and impartiality have been ensured, which is one of the basic European standards.



### **2.3. Legal Acts of the Agency**

When it comes to creation of organisational conditions for the work of the Agency upon the proposal of the Council, at the session of the Administrative Committee of the Parliament of Montenegro, Statute of the Agency and Rulebook on Organisation and Job Description were unanimously supported

Under Article 56 of the Personal Data Protection Law and Article 15 of the Statute, the Personal Data Protection Agency Council has adopted several by-laws defining the work of the Agency such as:

- Work Rules ;
- Rulebook on Salaries, Allowances and Other Income of the Agency Employees;
- Rulebook on Allowances for Increased Costs of Employees;
- Code of Conduct of the Employees;
- Ethical Code;
- Rulebook on Official Identification;
- Rulebook on Usage of Official Cars and Fuel Costs;
- Rulebook on Allocating Official Mobile Phones and Acknowledgement of Costs of Their Usage;
- Rulebook on the Usage of Funds for Representation;
- Guide for Accessing Information in the Possession of the Agency.

Apart from the contents prescribed by the Personal Data Protection Law, Rules of the Agency Work define more thoroughly manner of work and acting as well as other issues of relevance for the work of the Agency.

Rulebook on Salaries, Allowances and other Income of the Personal Data Protection Agency Employees defines manner of determining and paying salaries, allowances and other income of the employees, and the Rulebook on the Allowance or Increased Costs of the Employees defines manner of determining and paying allowances on the basis of the increased costs (daily allowances for business trips in the country and abroad, allowance for meals within working hours, etc.)

Rules on the Conduct of the Employees define routines and procedures of the Agency employees as well as of the citizens entering the building.

Ethical Codex specifically prescribes codes of conduct in performing confidential works of the Personal Data Protection Employees.

Rulebook on Official Identification prescribes pattern of identification of the Chairman and members of the Council, Director, Deputy Director, secretary and authorised officials – Agency inspectors, manner of its issuing and manner of keeping records on issued identification.

Rulebook on Usage of Official Cars and Fuel Costs defines usage, maintenance and keeping record of official cars.

Rulebook on Allocation of Official Mobile Phones and Acknowledgement of Costs of Their Usage defines right to usage of the mobile phone, and Decision which is integral part of the Rulebook determines monthly limits of mobile phone expenses

Rulebook on Usage of Funds for Representation defines expenditures of representation incurred in establishing cooperation of the Personal Data Protection Agency, Chairman and members of the Council and the Agency Director with foreign institutions, public administration authorities, civil sector, etc.

In accordance with the obligation stemming from Article 5 of the Law on Free Access to Information, Guideline on Access to Information in the possession of the Agency has been made and it defines manner of accessing documents and types of documents in the possession of the Agency.

### **3. PERSONAL DATA PROTECTION AGENCY' S WORK IN MONTENEGRO**

### **3.1. Internal organization and occupancy of job posts**

Organisation units of the Agency are Department for Supervision and Personal Data Protection and Professional Agency Service.

Department for Supervision and Personal Data Protection include: Supervision Department, Department for Protection of Rights and Conditions for Personal Data Processing, Department for Registers and Information Technologies, Department for Data Protection Measures and Cooperation.

For the execution of works within the Agency competences 220 job posts have been organised including 22 executors: Agency Director, Agency Deputy Director, Chief Inspector – Head of Department, inspector for inspection supervision affairs in the area of personal data protection, Head of Department, counsellor for administrative affairs, Head of Department, counsellor for monitoring regulations application, counsellor for development and improvement of measures of personal data protection, Head of Department – register controller, technician – operator for registering and maintenance, secretary of professional service, chief accountant, chief bookkeeper – accountant, archivist – documentarist, technical secretary – administrator, driver – postman, cleaning lady.

By the end of the reporting period Personal Data Protection Agency filled 8 out of 22 classified jobs, which represents 36.40%. In employing, apart from qualifications of the candidates, national representation and gender equality was also taken into consideration.

The goal is to increase employment in 2011, and recommendation of the Committee for Human Rights of the Parliament of Montenegro is personnel occupancy of 80% out of total number of classified jobs. Support for increasing number of employees is found in the strategy for personal data protection that was adopted in June 2008 by the Ministry of Interior and Public Administration

### **3.2. Registration of Personal Data Filing System Controllers**

Art. 27, para. 1 of Personal Data Protection Law prescribes that the personal data filing system controller must, prior to establishing a personal data filing system, obtain the consent of the supervisory authority.

Personal data filing systems established before the Personal Data Protection Law came into force, had to be harmonised with the provision of this Law within 9 months from the day it came into force, pursuant to Art. 77, para 1 of the Law, i.e. not later than 30 September 2009.

Personal data filing system controllers are obliged to submit a formal notification on personal data filing systems in their possession to the Personal Data Protection Agency, on a prescribed form defined in Art. 26, para. 2. The Agency then carries out *ex officio* registration of the personal data filing system controller in the Register, pursuant to Art. 29, para. 1 of the Law.

The form and content is prescribed by the Rulebook on form and manner of keeping records of data on personal data filing systems prescribed by the Ministry of Interior and Public Administration.

The records of personal data filing systems contain information on the name of the personal data filing system, legal basis for processing personal data; name of the personal data filing system controller, its seat, temporary or permanent residence and address; purpose of processing personal data; category of data subjects, category of personal data in the personal data filing system; manner of collecting and keeping personal data, timeline for keeping and using personal data; name of the recipient of personal data filing system; their seat, or temporary/permanent residence and address; data on transfer of personal data from Montenegro together with the name of the country or the international organisation or other foreign recipient of personal data, the purpose of the transfer as established by a ratified international treaty and law, i.e. certain written agreement of data subject; internal personal data processing and protection rules of the personal data filing system controller, which enable previous analysis of measure appropriateness towards the aim of ensuring the safety of processing.

Art. 5, para. 1 of the Personal Data Protection Law prescribes that all public authorities, public administration bodies, local self-governments and local administration authorities, commercial enterprises and other legal persons, entrepreneurs and natural persons, with the seat or domicile in Montenegro are obliged to establish personal data filing systems and keep them in accordance with this Law. In this purpose, we are also referring to Art. 9, para 1, item 3 of the Law defining the term "personal data filing system"

### **3.3. Opinions regarding the Implementation of the Law**

Personal Data Protection Agency provides opinions regarding the implementation of the Personal Data Protection Law; provides an opinion in the case of doubt whether a set of personal data is considered a filing system within the meaning of this Personal Data Protection Law and provides an opinion as to whether a specific way of personal data processing violates the rights and freedoms of individuals.

In 2010, the Agency has made the total of 11 opinions upon request.

1. **The member of Movement for Changes (PZP), Koča Pavlović** – The Agency received the information regarding illegal handling of personal data, which indicated that certain services of the Democratic Party of Socialists (DPS CG) are dealing with personal data processing of all the citizens aimed at establishing a personal data filing system “safe voice” i.e. the internal records on voting choices during elections, established and kept contrary to the Personal Data Protection Law. Upon the received information, a member of the Council had discussions with DPS and, according to the determined facts and received documents, the Council has provided the

#### **Opinion**

that, from the data received, it cannot be determined whether DPS is violating the rights and freedoms of data subjects from the area of personal data protection.

2. **MIPA- SNP** - Ministry of Interior and Public Administration (MIPA) submitted the request for opinion to the Agency whether they should meet the request of the Socialist People's Party (SNP) – Municipal Committee Podgorica and deliver data, in an electronic copy (MS Access database), on persons who changed the address in Podgorica, in the period from 1 April 2009 to 12 May 2010, including: name and surname, unique personal identification number, date when the address was changed, previous address and new address. At the session, held on 9 June 2010, the Council of the Agency has provided the

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that the requested data should not be submitted. Submitting the requested data would be contrary to Art. 2, para. 1 of the Personal Data Protection Law.

- 3. “Studio Moderna Montenegro” LLC - “Studio Moderna Montenegro”** LLC has submitted an opinion request to the Agency for clarification of certain issues during the establishment of a database of clients and asking whether this formal filing system needs to be registered at the competent body. The Council of the Personal Data Protection Agency, on the basis of the previously stated situation, has provided the

### **R e c o m m e n d a t i o n**

that the consent is necessary for the establishment of personal data filing systems pursuant to Personal Data Protection Law, as well as the obligation to be registered at the competent body.

- 4. MIPA - SNP - Ministry of Interior and Public Administration (MIPA)** submitted the opinion request to the Agency whether they should meet the request of the Socialist People's Party (SNP) – Municipal Committee Podgorica and deliver data on persons: 1) who have unregistered their permanent residences in the municipality of Golubovci in the period from 17 October 2009 until the day the request was submitted, including: name and surname of the person that has unregistered his/her permanent residence, date, date of birth, unique personal identification number, place, municipality and the state of birth, address from which the permanent residence was unregistered, place, municipality and state of the registered future residence of this person and 2) who have registered their permanent residence in the municipality of Golubovci in the period from 17 October 2009 until the day the request was submitted including: name and surname of the person that has registered its permanent residence, date and address of the registered residence, date of birth, unique personal identification number, place, municipality and state of birth, place, municipality and state of the last residence of the person. The Council of the Personal Data Protection Agency, in the session held on October 1 2010, has provided the

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that the requested data should not be submitted. Submitting the requested data would be contrary to Art. 2, para. 1 of the Personal Data Protection Law.

- 5. Police Directorate – MIPA** - The Police Directorate has submitted an opinion request to the Personal Data Protection Agency on the implementation of the Personal Data Protection Law regarding the signing of the Annex to the Agreement on using personal and other data between the Ministry of Interior and Public Administration and the Police Directorate. The Council of the Agency has provided the

**O p i n i o n**

that both the Agreement and the Annex need to be in accordance with the Personal Data Protection Law. On the basis of the submitted documents, the opinion of the Personal Data Protection Agency is that the adoption of the new Agreement is necessary, which needs to be in accordance with the Personal Data Protection Law and that the implementation of the Agreement compliant to the Law cannot create obstructions in the execution of obligations prescribed by the Law.

- 6. MIPA – Attorney at law Z.Đ. from Zemun** - MIPA has submitted an opinion request to the Agency whether they should submit data from the residence records, change of the address, departure of the citizen abroad and passport number for B. Š. to the attorney at law Z. Đ. from Zemun regarding a court proceeding, initiated upon a claim of B.N. for divorce. The Council of the Agency has provided the

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that the requested data on B. Š. can be submitted to the attorney at law Z. Đ, but only under the condition that B.Š. gives his/her consent pursuant to Art. 42, item 2 of the Personal Data Protection Law, since in a part of the request, it is stated that personal data in the records of protected data kept at competent bodies are requested.

- 7. Attorney Office, attorneys: Dalibor Kavarić i Danilo Radošević, representatives of „AVON Cosmetics Montenegro” LLC** - Attorneys from the Attorney Office D.K. and D.R, legal representatives of „AVON Cosmetics Montenegro ” LLC have submitted an opinion request to the Personal Data Protection Agency on several legal dilemmas including: the need for the consent of associates – sellers of “Avon” cosmetics from Montenegro for the transfer of personal data and unification into one database which would be kept and processed in another country and in which manner or in what form; the need to inform the associates-sellers of “Avon” cosmetics when their consent is not necessary on establishing the database or its transfer from the country; the necessity to receive

approval from one of the public authorities or the Personal Data Protection Agency for the previously stated actions as well the necessary documentation for having the consent and timeline for receiving it ; need to conclude agreements on keeping and updating database between the representative of the stated legal person in Montenegro and representative of the parent legal person in another country; need to harmonise other important legal matters with the Personal Data Protection Law in this specific case. The Council of the Personal Data Protection Agency has provided the

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that in order to act in accordance with the further stated interpretations as the answer to your questions, it is necessary to harmonise the personal data filing system “AVON Cosmetics Montenegro” LLC with the provisions of the Personal Data Protection Law and obtain the consent from the Personal Data Protection Agency for its establishment, and then register at the Personal Data Protection Agency as the personal data filing system controller. Collection, processing, protection and transfer from Montenegro can be done only in accordance with the Personal Data Protection Law and it is necessary to obtain consent for the establishment of new personal data filing systems i.e. to get registered as the personal data filing system controller. Personal Data Protection Law defines the possibility and terms of personal data transfer from Montenegro, so it is necessary to comply with the Law prescribing these issues.

- 8. Supreme Court of Montenegro** - The Supreme Court of Montenegro has submitted an opinion request to the Agency whether the files of cases established in the criminal procedure are considered to be personal data filing system in the sense of the Personal Data Protection Law and whether the files of cases in other court proceedings (litigation, non-litigation, executive, administrative) are considered as personal data filing systems in the sense of the Personal Data Protection Law. The Council of the Agency has provided the

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that Art. 8, para. 1 f the Law does not exclude the legal obligation of establishing personal data filing systems, with regard to the fact that the provisions of this Law, except for the supervision provisions, do not apply to the processing of personal data in cases established in pre-trial and criminal proceeding, and their processing is determined by the Rules



of Court ensuring the method of protection of these data. The files of cases in other court proceedings from the request are not treated as special categories in Art. 8, para.1 of the Law, so there is an obligation to establish an appropriate personal data filing system for these cases in accordance with all provisions of the Personal Data Protection Law.

9. **Commission for the Prevention of Conflict of Interests** - Commission for the Prevention of Conflict of Interests has addressed the Agency with the request for the opinion where it asks for the opinion on application of the Personal Data Protection Law regarding enabling access to the copy of the Agreement on Paying off Housing Loan which was submitted as an appendix to the Report on Income and Property for 2009 of the public official of the Government of Montenegro. Agency Council has delivered its

**Opinion**

that by submitting required documents Personal Data Protection Law is not breached.

10. **Commission for the Prevention of Conflict of Interests** - Commission for the Prevention of Conflict of Interests has addressed the Agency with the request for the opinion where it asks for the opinion on the application of Personal Data Protection Law regarding Commission for the Prevention of Conflict of Interests's addressing the municipal assembly of Kolasin for submitting personal data (Personal Identification Number, mother's name, father's name, place of residence) of public officials against whom the Commission has initiated legal proceedings with respect to breach of the Law on the Prevention of Conflict of Interests and interpretation of Article 14 of Personal Data Protection Law. Agency Council has delivered its

**Opinion**

that by submitting required data to the Commission for the Prevention of Conflict of Interests Municipal assembly of Kolasin does not breach Personal Data Protection Law.

11. **Municipal Assembly of Bar** – Agency for the Investment and Property of Bar has addressed the Agency with the request for opinion where it asks for the opinion on application of the Personal Data Protection Law with regard to addressing of the town counsellors of the Municipal Assembly of Bar for getting information on exact amount of debt of the

natural person by virtue of concluded Contract on Transfer of Rights to Building Land or Financing Communal Furnishing of Building Land with the Municipal Assembly of Bar. Agency Council has delivered its

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that by submitting required data breach of Personal Data Protection Law would occur.

#### **3.4. Cooperation with state authorities, public institutions, etc.**

Cooperation with state authorities has been recognized by the Agency as an efficient possibility of the Law implementation, and in that view it established and developed high quality communication both with state authorities and public companies, local self-government units and NGO and companies' representatives.

Agency representatives had the opportunity to be lecturers at the gatherings organised by the Human Resources Management Authority for civil servants.

Contacts with some other state authorities have been made for the first time and future cooperation has been agreed. However, in this, and other segments as well, in the reporting period, the Agency was limited by the existing capacities which were certainly insufficient.

Personal Data Protection Agency supervises implementation of the Law by controllers and processors. While doing so, without good cooperation with state authorities, protection of personal data would be called into question.

#### **3.5. Inspection supervision – Agency Actions *ex officio*.**

Personal Data Protection Agency as a supervisory body in the application of provisions of Personal Data Protection Law (Official Gazette of Montenegro 79/08,70/09) primarily performs supervision over personal data protection implementation in accordance with law, through inspection supervision of supervision subjects, processors and controllers of personal data filing systems.

In accordance with the plan of inspection supervision, Agency has implemented a number of inspection controls of supervision subjects within state and public sector, local government units, companies and entrepreneurs in the region of Montenegro.

Mentioned activities of the inspectors of the Agency, apart from supervisory, had preventive and educational character, which includes a kind of acquaintance with obligations and responsibilities arising from the Personal Data Protection Law.

In supervision, object of the attention of the Agency was harmonization with provisions of the Law which determine possibility and manner of usage of biometric data, and manner of keeping records of entering and exiting business area, as well as video surveillance procedure.

Our primary goal in supervision procedure is identifying breaches of Law through stating found irregularities, which leads to elimination of incurred breaches within realistic time periods.

In performing supervision, by its decision, the Agency is authorized to: order that irregularities in the processing of personal data be eliminated within defined time frame, impose temporary ban on unlawful processing of personal data, order the erasure of personal data, and impose a ban on transfer of personal data from Montenegro.

Apart from the above stated measures, with the aim of more efficient application of Law, law maker envisaged penalty provisions for not obeying provisions. Envisaged penalties in legal proceedings, both for legal persons and responsible persons from the institutions are between 550.00 € and 16.500,00 €. For unauthorized collecting and processing of personal data and abuse of the same, criminal accountability and imprisonment of one year and in case of official person imprisonment of up to three years are envisaged.

In the reporting period the Agency was not submitting requests for legal proceedings since conditions were not met.

15 regular inspection supervisions and four supervisions upon request for rights protection have been performed together with concrete activities regarding supervision in the period from the end of October to the end of 2010.

### **3.6. Regular supervision**

The subject of regular supervision during 2010 was the existence of personal data filing systems, name of the system, legal basis for personal data processing, name of the controller, purpose of processing, categories of data subjects, categories of data contained in the personal data filing system, manner of collecting and storing personal data, time limits for storing and use of personal data, name of the recipient of personal data, information on transfer of personal data from Montenegro, internal rules of the filing system controller regarding processing and safeguarding personal data, records of entering or exiting business or official premises and video surveillance.

In the supervisions carried out so far we have determined that:

- most of the institutions have not appointed responsible persons as personal data filing system controllers;
- responsible persons have not adopted the Rules on use of video surveillance where the reasons for video surveillance should be listed;
- the notifications on video surveillance have not been displayed in a visible place,
- very often the consent of the data subject has not been obtained for disclosing personal data on notice boards or websites of institutions;
- personal data protection is not in an appropriate level;
- also, there is a lack of knowledge regarding the regulation defining personal data protection.

## **1. Supervision inspection of the Biotechnical Faculty, Podgorica**

In the supervision inspection, it was determined that the Biotechnical Faculty has two personal data filing systems:

- Personnel files
- Register of students

On the basis of the determined factual state after the supervision, irregularities have been determined and the personal data filing system controller was ordered to remove the irregularities within the given deadline as follows:

- the existing personal data filing systems have been established before the Personal Data Protection Law came into force (31 December 2008) and they have to be harmonised with the provisions of this Law within nine months since the date it came into force, pursuant to Art.

77, para. 1. It has been found that the legal person has personal data filing systems established and that the consent of the Personal Data Protection Agency is not necessary for already established filing systems, but there is the obligation that the existing filing systems are harmonised with the provisions of Art. 26 of this Law, i.e. that the notification of the established personal data filing systems is delivered in a prescribed form from Art. 26, para. 2 pursuant to the Law, after which it will be registered as the personal data filing system controller pursuant to Article 29, para. 1.

- the person in charge of collecting and processing personal data within their scope of work is therefore responsible for personal data protection. These persons, however, are not appointed as personal data filing system controllers implying they do not have full legal responsibility, and it has been ordered that a decision is made appointing the personal data filing system controllers as responsible persons for the existing personal data filing systems.
- the existence of the category – national origin – has been determined in the application form for enlisting students of the Bureau of Statistics of Montenegro, adopted before the Personal Data Protection Law come into force. National origin is processed within a special category of personal data (Art. 9, para. 7 of the Law ) and it has been ordered that the personal data filing system controller obtains consent of every student whose data are being processed by adding the option “not necessary” next to the category “national origin“ on the form.

The deadline of 60 days was given to the personal data filing system controller to remove the irregularities after which the inspectors of the Personal Data Protection Agency will verify whether the institution acted accordingly.

## **2. Supervision inspection of the PI Airports of Montenegro**

In the supervision inspection, it was determined that the PI Airports has a personal data filing system:

- Personnel files

On the basis of the determined factual state after the supervision, irregularities have been determined and the personal data filing system controller was ordered to remove the irregularities within the given deadline as follows:

- the existing personal data filing systems have been established before the Personal Data Protection Law came into force (31 December 2008) and they have to be harmonised with the provisions of this Law within nine months since the date it came into force, pursuant to Art. 77, para. 1. It has been found that the legal person has personal data filing systems established and that the consent of the Personal Data Protection Agency is not necessary for already established filing systems, but there is the obligation that the existing filing systems are harmonised with the provisions of Art. 26 of this Law, i.e. that the notification of the established personal data filing systems is delivered in a prescribed form from Art. 26, para. 2 pursuant to the Law, after which it will be registered as the personal data filing system controller pursuant to Article 29, para. 1.
- the person in charge of collecting and processing personal data within their scope of work is therefore responsible for personal data protection. These persons, however, are not appointed as personal data filing system controllers implying they do not have full legal responsibility, and it has been ordered that a decision is made appointing the personal data filing system controllers as responsible persons for the existing personal data filing systems.

During the supervision it has been found that the PI Airports of Montenegro has video surveillance, which is a part of the project documentation established on the basis of the National Safety programme and international protection standards of airports. It has been determined that there is no visible notification on video surveillance and it was ordered that this irregularity is corrected within the given deadline.

The deadline of 60 days was given to the personal data filing system controller to remove the irregularities after which the inspectors of the Personal Data Protection Agency will verify whether the institution acted accordingly.

### **3. Supervision inspection of the Human Resources Management Authority, Podgorica**

In the supervision carried out at the Human Resources Management Authority it was determined that they have four personal data filing system

- Central personnel records
- List for candidate selection
- List for candidates that meet the requirements
- List for candidate selection - trainees

On the basis of the determined factual state after the supervision, irregularities have been determined and the personal data filing system controller was ordered to remove the irregularities within the given deadline as follows:

- the existing personal data filing systems have been established before the Personal Data Protection Law came into force (31 December 2008) and they have to be harmonised with the provisions of this Law within nine months since the date it came into force, pursuant to Art. 77, para. 1. It has been found that the legal person has personal data filing systems established and that the consent of the Personal Data Protection Agency is not necessary for already established filing systems, but there is the obligation that the existing filing systems are harmonised with the provisions of Art. 26 of this Law, i.e. that the notification of the established personal data filing systems is delivered in a prescribed form from Art. 26, para. 2 pursuant to the Law, after which it will be registered as the personal data filing system controller pursuant to Article 29, para. 1.
- the person in charge of collecting and processing personal data within their scope of work is therefore responsible for personal data protection. These persons, however, are not appointed as personal data filing system controllers implying they do not have full legal responsibility, and it has been ordered that a decision is made appointing the personal data filing system controllers as responsible persons for the existing personal data filing systems.
- the List for candidate selection – trainees with all the data, made on the basis of submitted documents, is published on the website of the HRM Authority. It was ordered that the data from this personal data filing system published on the website of HRM Authority are harmonised with Art. 2, paras. 1 and 2 of the Law, concerning previous consent and appropriate amount of data. All these data on candidates-trainees need to be erased from the list published on the

HRM Authority except their first and last names and university degree.

- the HRM Authority, pursuant to the Law on Civil Servants and State Employees is responsible for keeping the Central personnel records. Centre for informational personnel system at the HRMA is the administrator of the database and specific passwords are needed to access the database and enter and/or change individual or group applications. It was determined that the work so far on these applications was without any control and therefore it was subject to a number of personal data abuses in the applications. It was ordered that a decision is made authorizing selected persons to access the database and precisely define their authorities, with the obligatory introduction of limitations implying leaving clear trail when entering individual applications with an explanation. During the interventions on the application upon the request of a user, it is also necessary to introduce a written trail of the request for intervention with the explanation.

The deadline of 60 days was given to the personal data filing system controller to remove the irregularities after which the inspectors of the Personal Data Protection Agency will verify whether the institution acted accordingly.

#### **4. Supervision inspection of the Faculty of Natural Studies and Mathematics, Podgorica**

In the supervision inspection, it was determined that the Faculty of Natural Studies and Mathematics has three personal data filing system :

- Personnel records
- Register of students
- Register of graduates

On the basis of the determined factual state after the supervision, irregularities have been determined and the personal data filing system controller was ordered to remove the irregularities within the given deadline as follows:

- the existing personal data filing systems have been established before the Personal Data Protection Law came into force (31 December 2008) and they have to be harmonised with the provisions of this Law



within nine months since the date it came into force, pursuant to Art. 77, para. 1. It has been found that the legal person has personal data filing systems established and that the consent of the Personal Data Protection Agency is not necessary for already established filing systems, but there is the obligation that the existing filing systems are harmonised with the provisions of Art. 26 of this Law, i.e. that the notification of the established personal data filing systems is delivered in a prescribed form from Art. 26, para. 2 pursuant to the Law, after which it will be registered as the personal data filing system controller pursuant to Article 29, para. 1.

- the person in charge of collecting and processing personal data within their scope of work is therefore responsible for personal data protection. These persons, however, are not appointed as personal data filing system controllers implying they do not have full legal responsibility, and it has been ordered that a decision is made appointing the personal data filing system controllers as responsible persons for the existing personal data filing systems.
  
- the existence of the category – national origin – has been determined in the application form for enlisting students of the Bureau of Statistics of Montenegro, adopted before the Personal Data Protection Law come into force. National origin is processed within a special category of personal data (Art. 9, para. 7 of the Law ) and it has been ordered that the personal data filing system controller obtains consent of every student whose data are being processed by adding the option “not necessary” next to the category “national origin“ on the form.

## **5. Supervision inspection of the PU Institute for education and professional rehabilitation of disabled children and youth, Podgorica**

In the supervision inspection, it was determined that PU Institute for education and professional rehabilitation of disabled children and youth has four personal data filing systems:

- Personnel records
- Records of students
- Social records of students
- Medical records of students

On the basis of the determined factual state after the supervision, irregularities have been determined and the personal data filing system controller was ordered to remove the irregularities within the given deadline as follows:

- the existing personal data filing systems have been established before the Personal Data Protection Law came into force (31 December 2008) and they have to be harmonised with the provisions of this Law within nine months since the date it came into force, pursuant to Art. 77, para. 1. It has been found that the legal person has personal data filing systems established and that the consent of the Personal Data Protection Agency is not necessary for already established filing systems, but there is the obligation that the existing filing systems are harmonised with the provisions of Art. 26 of this Law, i.e. that the notification of the established personal data filing systems is delivered in a prescribed form from Art. 26, para. 2 pursuant to the Law, after which it will be registered as the personal data filing system controller pursuant to Article 29, para 1.
- the person in charge of collecting and processing personal data within their scope of work is therefore responsible for personal data protection. These persons, however, are not appointed as personal data filing system controllers implying they do not have full legal responsibility, and it has been ordered that a decision is made appointing the personal data filing system controllers as responsible persons for the existing personal data filing systems.
- PI Institute for education and professional rehabilitation of disabled children and youth is processing and keeping almost all of their personal data filing systems in a hard copy so we recommend that, in future, technical conditions are made for electronic processing of these data.

The deadline of 60 days was given to the personal data filing system controller to remove the irregularities after which the inspectors of the Personal Data Protection Agency will verify whether the institution acted accordingly.

## **6. Supervision inspection of the Crnogorska komercijalna banka AD Podgorica, Podgorica**

In the supervision inspection, it was determined that Crnogorska komercijalna banka has two personal data filing systems:

- Personnel records
- Client records

On the basis of the determined factual state after the supervision, irregularities have been determined and the personal data filing system controller was ordered to remove the irregularities within the given deadline as follows:

- the existing personal data filing systems have been established before the Personal Data Protection Law came into force (31 December 2008) and they have to be harmonised with the provisions of this Law within nine months since the date it came into force, pursuant to Art. 77, para. 1. It has been found that the legal person has personal data filing systems established and that the consent of the Personal Data Protection Agency is not necessary for already established filing systems, but there is the obligation that the existing filing systems are harmonised with the provisions of Art. 26 of this Law, i.e. that the notification of the established personal data filing systems is delivered in a prescribed form from Art. 26, para 2 pursuant to the Law, after which it will be registered as the personal data filing system controller pursuant to Article 29, para 1.
- the person in charge of collecting and processing personal data within their scope of work is therefore responsible for personal data protection. These persons, however, are not appointed as personal data filing system controllers implying they do not have full legal responsibility, and it has been ordered that a decision is made appointing the personal data filing system controllers as responsible persons for the existing personal data filing systems.
- CKB is obliged to submit the final version of the Statement, or the Rulebook on bank protection from human risks for inspection and opinion of the Personal Data Protection Agency considering that the previous draft of the Rulebook or Statement was considered by the Personal Data Protection Agency and its opinion was requested by the Union of Financial Institutions.

The deadline of 60 days was given to the personal data filing system controller to remove the irregularities after which the inspectors of the Personal Data Protection Agency will verify whether the institution acted accordingly.

## **7. Supervision inspection of Rokšped d.o.o**

In the supervision inspection, it was determined that Rokšped d.o.o has three personal data filing systems:

- Personnel records
- Records of customers
- Records on car services

On the basis of the determined factual state after the supervision, irregularities have been determined and the personal data filing system controller was ordered to remove the irregularities within the given deadline as follows:

- the existing personal data filing systems have been established before the Personal Data Protection Law came into force (31 December 2008) and they have to be harmonised with the provisions of this Law within nine months since the date it came into force, pursuant to Art. 77, para. 1. It has been found that the legal person has personal data filing systems established and that the consent of the Personal Data Protection Agency is not necessary for already established filing systems, but there is the obligation that the existing filing systems are harmonised with the provisions of Art. 26 of this Law, i.e. that the notification of the established personal data filing systems is delivered in a prescribed form from Art. 26, para 2 pursuant to the Law, after which it will be registered as the personal data filing system controller pursuant to Article 29, para 1.
- the person in charge of collecting and processing personal data within their scope of work is therefore responsible for personal data protection. These persons, however, are not appointed as personal data filing system controllers implying they do not have full legal responsibility, and it has been ordered that a decision is made appointing the personal data filing system controllers as responsible persons for the existing personal data filing systems.

- Rokšped d.o.o has video surveillance for which the Decision was not adopted regarding the reasons for its introduction, nor there is a visible notification on video surveillance. Therefore the management of the company was ordered to adopt a Decision on video surveillance defining the reasons for its introduction from Art. 35, para. 3 and the obligation to place a visible notification on video surveillance in the premises where the surveillance is located.

The deadline of 60 days was given to the personal data filing system controller to remove the irregularities after which the inspectors of the Personal Data Protection Agency will verify whether the institution acted accordingly.

## **8. Supervision inspection of PI Komunalne usluge, Podgorica**

In the supervision inspection, it was determined that the Komunalne usluge has a personal data filing system:

- Personnel records

On the basis of the determined factual state after the supervision, irregularities have been determined and the personal data filing system controller was ordered to remove the irregularities within the given deadline as follows:

- the existing personal data filing systems have been established before the Personal Data Protection Law came into force (31 December 2008) and they have to be harmonised with the provisions of this Law within nine months since the date it came into force, pursuant to Art. 77, para. 1. It has been found that the legal person has personal data filing systems established and that the consent of the Personal Data Protection Agency is not necessary for already established filing systems, but there is the obligation that the existing filing systems are harmonised with the provisions of Art. 26 of this Law, i.e. that the notification of the established personal data filing systems is delivered in a prescribed form from Art. 26, para 2 pursuant to the Law, after which it will be registered as the personal data filing system controller pursuant to Article 29, para 1.
- the person in charge of collecting and processing personal data within their scope of work is therefore responsible for personal data

protection. These persons, however, are not appointed as personal data filing system controllers implying they do not have full legal responsibility, and it has been ordered that a decision is made appointing the personal data filing system controllers as responsible persons for the existing personal data filing systems.

The deadline of 60 days was given to the personal data filing system controller to remove the irregularities after which the inspectors of the Personal Data Protection Agency will verify whether the institution acted accordingly.

## **9. Supervision inspection of the Real Estate Administration, Podgorica**

In the supervision inspection, it was determined that the Real Estate Administration has two personal data filing systems:

- Central personnel records
- Register of data users and owners of the right to immovables (Records on the cadastre of immovables; Records of the cadastre of land; Census cadastre)

On the basis of the determined factual state after the supervision, irregularities have been determined and the personal data filing system controller was ordered to remove the irregularities within the given deadline as follows:

- the existing personal data filing systems have been established before the Personal Data Protection Law came into force (31 December 2008) and they have to be harmonised with the provisions of this Law within nine months since the date it came into force, pursuant to Art. 77, para. 1. It has been found that the legal person has personal data filing systems established and that the consent of the Personal Data Protection Agency is not necessary for already established filing systems, but there is the obligation that the existing filing systems are harmonised with the provisions of Art. 26 of this Law, i.e. that the notification of the established personal data filing systems is delivered in a prescribed form from Art. 26, para 2 pursuant to the Law, after which it will be registered as the personal data filing system controller pursuant to Article 29, para 1.
- the person in charge of collecting and processing personal data within their scope of work is therefore responsible for personal data

protection. These persons, however, are not appointed as personal data filing system controllers implying they do not have full legal responsibility, and it has been ordered that a decision is made appointing the personal data filing system controllers as responsible persons for the existing personal data filing systems.

- the Department for Geodesy and Cadastre Information System in accordance with their scope of work, or job description, has access to the Register of data users and owners of the right to immovables. During their access, the employees have their own individual passwords but apart from the “log file” from the computer which is very general, there are no obvious records of access to the Register, or the records of explanations for access. The Real Estate Administration was ordered that in the Department for Geodesy and Cadastre Information System ensures that users of personal data, data being processed and legal basis for using personal data, time of logging in and logging out of the system are automatically recorded (Art. 7, para. 2 of the Law)
  
- the Real Estate Administration has video surveillance. There is no decision in writing on reasons for having video surveillance adopted by the head of the Administration. In the premises of the Administration, there is no visible notification about video surveillance. There are 14 cameras, four of which are in the offices of the Department for Geodesy and Cadastre, nine in hallways and one at the exit from the elevator of the joint hallway from which one directly enters the premises of the Administration. Opinion and the consent of the representational union were not obtained for video surveillance in the offices. Functioning and records on video surveillance are ensured via server with a hard disc, which is a part of a local network so that the access to the current video report is available in almost all computers with a special password. On the basis of these determined irregularities, the Real Estate Administration was ordered that the head of this institution adopts the Decision on video surveillance, in writing, with clear reasons for its introduction (Art. 35 of the Personal Data Protection Law), to make a public notification on video surveillance (Art.39 of the Law) and that prior to adopting the decision on video surveillance in offices, he/she obtains the opinion of the representative union and that the employees in these offices are informed, in writing, on video surveillance (Art 39 of the Law), that

by removing the access code, access to video surveillance is disabled for all unauthorized persons as well as that, in the form of a decision in writing, the responsible person for processing and protection of videos is appointed.

- When accessing the public website, when the owners of the right, by referring to their personal data, have the insight into their data from the cadastre of immovables, a higher protection of data is needed by establishing individual secret passwords or by two key system for data access or any other equivalent technical solution and to especially disable persons not only to make an insight into their data but also the data of other persons in the same list of immovables.

The deadline of 60 days was given to the personal data filing system controller to remove the irregularities after which the inspectors of the Personal Data Protection Agency will verify whether the institution acted accordingly.

#### **10. Supervision inspection of the micro-credit institution AgroInvest, Podgorica**

In the supervision inspection, it was determined that the micro-credit institution AgroInvest has two personal data filing systems:

- Personnel records
- Credit records

On the basis of the determined factual state after the supervision, irregularities have been determined and the personal data filing system controller was ordered to remove the irregularities within the given deadline as follows:

- the existing personal data filing systems have been established before the Personal Data Protection Law came into force (31 December 2008) and they have to be harmonised with the provisions of this Law within nine months since the date it came into force, pursuant to Art. 77, para. 1. It has been found that the legal person has personal data filing systems established and that the consent of the Personal Data Protection Agency is not necessary for already established filing systems, but there is the obligation that the existing filing systems are harmonised with the provisions of Art. 26 of this Law, i.e. that the notification of the established personal data filing systems is delivered



in a prescribed form from Art. 26, para 2 pursuant to the Law, after which it will be registered as the personal data filing system controller pursuant to Article 29, para 1.

- the person in charge of collecting and processing personal data within their scope of work is therefore responsible for personal data protection. These persons, however, are not appointed as personal data filing system controllers implying they do not have full legal responsibility, and it has been ordered that a decision is made appointing the personal data filing system controllers as responsible persons for the existing personal data filing systems.
- Access to the database, from a procedural point of view, is appropriately protected; however, it is not clear how or on the basis of which legal grounds the company Globalsoft carries out storing of archive records, i.e. personal data. Namely, in the Articles of Incorporation, Globalsoft has put the name of activity as – development of databases – which does not include storing the documents, which is the subject of the Contract made between the MFI AgroInvest VFI d.o.o. and Globalsoft d.o.o. After determining the irregularities, it was ordered that Globalsoft, in the prescribed deadline, provides the documents on the legal ground for carrying out the activity of storing documentation.
- During the conclusion of contract with the client and taking personal data on his/her family, or spouse, the consent from all family members for providing their personal data is required.
- AgroInvest has video surveillance. There is no decision in writing on video surveillance by the head of the institution nor for the reasons for having video surveillance. There is no visible notification on video surveillance in the premises of AgroInvest, nor at the entrance. There are eight active cameras, two of which are in the hallway of the premises of AgroInvest, two above the working places of bank tellers and four are outside, two at the front and two at the back side of the building. Consent from bank tellers was not obtained, nor the opinion and consent of the representative union for video surveillance above the bank tellers working places. Functioning and records on video surveillance is done via a server with a hard disc which is a part of a local network, so that the access to current video report is possible

with online access to computers by using a special password, outside the premises of AgroInvest. The timeline for keeping videos depends on the capacity of the server. Video reader system functions by automatically erasing data after the given deadline. The head of the office and an IT expert have access to videos. After determining the irregularities concerning video surveillance, AgroInvest has been ordered that the head of the institution adopts a decision on video surveillance, in writing, with the statement of reasons for it (Art. 3 of the Personal Data Protection Law), to make a public notification on video surveillance (Art.39 of the Law) and that prior to adopting the decision on video surveillance in offices, he/she obtains the opinion of the representative union and that the employees in these offices are informed, in writing, on video surveillance (Art 36 of the Law), to ensure the infrastructure for the video surveillance room, to disable access to video surveillance online (live), especially outside the premises of AgroInvest, as well as in the form of a special decision, and to appoint the responsible person for surveillance and protection of videos.

The deadline of 60 days was given to the personal data filing system controller to remove the irregularities after which the inspectors of the Personal Data Protection Agency will verify whether the institution acted accordingly.

## **11. Supervision inspection of the Supreme Court of Montenegro**

In the supervision inspection, it was determined that the Supreme Court of Montenegro has five personal data filing systems:

- Central personnel records
- Records of commercial case parties
- Records of civil case parties
- Records of criminal case parties
- Records of administrative case parties

On the basis of the determined factual state after the supervision, irregularities have been determined and the personal data filing system controller was ordered to remove the irregularities within the given deadline as follows:

- the existing personal data filing systems have been established before the Personal Data Protection Law came into force (31 December 2008) and they have to be harmonised with the provisions of this Law within nine months since the date it came into force, pursuant to Art. 77, para. 1. It has been found that the legal person has personal data filing systems established and that the consent of the Personal Data Protection Agency is not necessary for already established filing systems, but there is the obligation that the existing filing systems are harmonised with the provisions of Art. 26 of this Law, i.e. that the notification of the established personal data filing systems is delivered in a prescribed form from Art. 26, para 2 pursuant to the Law, after which it will be registered as the personal data filing system controller pursuant to Article 29, para 1.
- the person in charge of collecting and processing personal data within their scope of work is therefore responsible for personal data protection. These persons, however, are not appointed as personal data filing system controllers implying they do not have full legal responsibility, and it has been ordered that a decision is made appointing the personal data filing system controllers as responsible persons for the existing personal data filing systems.

The deadline of 60 days was given to the personal data filing system controller to remove the irregularities after which the inspectors of the Personal Data Protection Agency will verify whether the institution acted accordingly.

## **12. Supervision inspection of the Administration for local public revenues, Podgorica**

In the supervision inspection, it was determined that the Administration for Local Public Revenues has two personal data filing systems:

- Central personnel records and
- Records of natural persons - taxpayers for immovables

On the basis of the determined factual state after the supervision, irregularities have been determined and the personal data filing system controller was ordered to remove the irregularities within the given deadline as follows:

- the existing personal data filing systems have been established before the Personal Data Protection Law came into force (31 December 2008) and they have to be harmonised with the provisions of this Law within nine months since the date it came into force, pursuant to Art. 77, para. 1. It has been found that the legal person has personal data filing systems established and that the consent of the Personal Data Protection Agency is not necessary for already established filing systems, but there is the obligation that the existing filing systems are harmonised with the provisions of Art. 26 of this Law, i.e. that the notification of the established personal data filing systems is delivered in a prescribed form from Art. 26, para 2 pursuant to the Law, after which it will be registered as the personal data filing system controller pursuant to Article 29, para 1.
  
- the person in charge of collecting and processing personal data within their scope of work is therefore responsible for personal data protection. These persons, however, are not appointed as personal data filing system controllers implying they do not have full legal responsibility, and it has been ordered that a decision is made appointing the personal data filing system controllers as responsible persons for the existing personal data filing systems.

The deadline of 60 days was given to the personal data filing system controller to remove the irregularities after which the inspectors of the Personal Data Protection Agency will verify whether the institution acted accordingly.

### **13. Supervision of the Secretariat for Local Administration and Social Activities, Municipality of Bar**

In the supervision inspection, it was determined that the Secretariat for Local Administration and Social Activities has eight personal data filing systems:

- Central personnel records
- Voters' list
- Register of marriages,
- Register and alphabetical book of issued employment booklets
- Register of certifications
- Register of deeds, registers 1, 2, and 3
- Register of misdemeanour procedure and

- Records of users of the right from soldier-disability assistance/protection

On the basis of the determined factual state after the supervision, irregularities have been determined and the personal data filing system controller was ordered to remove the irregularities within the given deadline as follows:

- the existing personal data filing systems have been established before the Personal Data Protection Law came into force (31 December 2008) and they have to be harmonised with the provisions of this Law within nine months since the date it came into force, pursuant to Art. 77, para. 1. It has been found that the legal person has personal data filing systems established and that the consent of the Personal Data Protection Agency is not necessary for already established filing systems, but there is the obligation that the existing filing systems are harmonised with the provisions of Art. 26 of this Law, i.e. that the notification of the established personal data filing systems is delivered in a prescribed form from Art. 26, para 2 pursuant to the Law, after which it will be registered as the personal data filing system controller pursuant to Article 29, para 1.
- the person in charge of collecting and processing personal data within their scope of work is therefore responsible for personal data protection. These persons, however, are not appointed as personal data filing system controllers implying they do not have full legal responsibility, and it has been ordered that a decision is made appointing the personal data filing system controllers as responsible persons for the existing personal data filing systems.
- the building of the Secretariat has video surveillance. There is no Decision, in writing, on the reasons for video surveillance adopted by the Head of the Municipality. In the premises of the building there is a visible notification on video surveillance. There are 21 operational cameras, and an additional non-operational one. Outside, there are five cameras, two of which are at the ramp of the parking lot, so that it can be opened for officers. The rest of the outdoor cameras cover the entrance of the building. There are four cameras covering the offices. In the building itself cameras are located in administrative zones or hallways, while two of them are in the offices of the civil bureau or the space where the counters of all municipal services are located. Representational union or the employees in the offices of the

civil bureau were not asked neither for consent nor for opinion. There is a video surveillance room where all cameras are on one computer, while a part of the videos which is transferred from the cameras at the entrance of the building, or from the ramp of the parking are being also transferred to the computer which is at the entrance desk for easier monitoring of the security. Only one person ex officio, Coordinator of the security of the object has access to the room for video surveillance and access with a special password, to the computer in which the images are recorded from the cameras. The videos are being kept for 10-15 days on the server depending on the activity of the cameras since they have movement sensors, after which they are being erased immediately. Copies of tapes are not made, except for purposes envisaged by the law. After determining the irregularities, it was ordered that the head of the institution adopts a decision on video surveillance in writing with the statement of reasons for it (Art. 35 of the Personal Data Protection Law) ,that prior to adopting the decision on video surveillance in civil bureau offices the opinion of the representative union is obtained and that the employees in these offices are informed, in writing, on video surveillance (Art 36 of the Law).

- In the premises of the Secretariat, at the entrance desk, there is a fingerprint reader, serving as records of work attendance of employees, so in accordance with the determined irregularity, it has been ordered that the reader for employees is removed as the records of work attendance because in is not in accordance with the Law on Personal Data Protection (Art. 2, para. 2 and Art. 32, para 2)

The deadline of 60 days was given to the personal data filing system controller to remove the irregularities after which the inspectors of the Personal Data Protection Agency will verify whether the institution acted accordingly.

#### **14. Supervision inspection of the Economy and Finance Secretariat of the Municipality of Bar**

In the supervision inspection, it was determined that the Economy and Finance Secretariat has two personal data filing systems:

- Central personnel records

- Records of taxpayers of tax on immovables

On the basis of the determined factual state after the supervision, irregularities have been determined and the personal data filing system controller was ordered to remove the irregularities within the given deadline as follows:

- the existing personal data filing systems have been established before the Personal Data Protection Law came into force (31 December 2008) and they have to be harmonised with the provisions of this Law within nine months since the date it came into force, pursuant to Art. 77, para. 1. It has been found that the legal person has personal data filing systems established and that the consent of the Personal Data Protection Agency is not necessary for already established filing systems, but there is the obligation that the existing filing systems are harmonised with the provisions of Art. 26 of this Law, i.e. that the notification of the established personal data filing systems is delivered in a prescribed form from Art. 26, para 2 pursuant to the Law, after which it will be registered as the personal data filing system controller pursuant to Article 29, para 1.
- the person in charge of collecting and processing personal data within their scope of work is therefore responsible for personal data protection. These persons, however, are not appointed as personal data filing system controllers implying they do not have full legal responsibility, and it has been ordered that a decision is made appointing the personal data filing system controllers as responsible persons for the existing personal data filing systems.

The deadline of 60 days was given to the personal data filing system controller to remove the irregularities after which the inspectors of the Personal Data Protection Agency will verify whether the institution acted accordingly.

## **15. Supervision inspection of the Ministry for Information Society**

In the supervision inspection, it was determined that the Ministry for Information Society has two personal data filing systems:

- Central personnel records and

- Central voters' list

On the basis of the determined factual state after the supervision, irregularities have been determined and the personal data filing system controller was ordered to remove the irregularities within the given deadline as follows:

- the existing personal data filing systems have been established before the Personal Data Protection Law came into force (31 December 2008) and they have to be harmonised with the provisions of this Law within nine months since the date it came into force, pursuant to Art. 77, para. 1. It has been found that the legal person has personal data filing systems established and that the consent of the Personal Data Protection Agency is not necessary for already established filing systems, but there is the obligation that the existing filing systems are harmonised with the provisions of Art. 26 of this Law, i.e. that the notification of the established personal data filing systems is delivered in a prescribed form from Art. 26, para 2 pursuant to the Law, after which it will be registered as the personal data filing system controller pursuant to Article 29, para 1.
- the person in charge of collecting and processing personal data within their scope of work is therefore responsible for personal data protection. These persons, however, are not appointed as personal data filing system controllers implying they do not have full legal responsibility, and it has been ordered that a decision is made appointing the personal data filing system controllers as responsible persons for the existing personal data filing systems.
- Server room, where servers for receiving and keeping the Central voters' list are kept, has video surveillance, on which the management has not adopted a decision. The employees are not present in the room all the time but according to their needs. Consent from the employees working in the room was not obtained. After these irregularities, it was ordered that prior to adopting the decision on video surveillance in the server room, the opinion from the representative union is obtained and the employees working in this room and that the employees are informed in writing on video surveillance (Art. 36 of the Law).



- Server room, where servers for receiving and keeping the Central voters' list and the planned central population register are kept, has a fingerprint reader for employees entering the room, as a safeguard according to the level of confidentiality of stored data. There is no decision for having these type of records of entrances into the room. After the determined state, it was ordered that prior to activating the fingerprint reader as records of entrances into the room, for the employees having access to the server room, there is an adequately elaborated decision adopted for introducing these records.

The deadline of 60 days was given to the personal data filing system controller to remove the irregularities after which the inspectors of the Personal Data Protection Agency will verify whether the institution acted accordingly.

### **3.7. Right protection requests**

The second important instrument of work of the Agency are procedures carried out upon the right protection requests. Every person has the right to submit a request to the Agency when they become aware or suspect that their personal data are illegally processed. During the reporting period, three right protection requests were submitted to the Agency:

- **Union of Financial Organisations of Montenegro**

Union of Financial Organisations, as the representative of the Union Organisation of the Crnogorska komercijalna banka, submitted the opinion request to the Personal Data Protection Agency i.e. initiative for protection of rights of employees at the bank. Management of CKB has prepared and offered a Statement for signature, an integral part of the Rulebook on bank protection from human risks, which contains several clauses which intervene with personal privacy i.e. they are in violation of the Personal Data Protection Law. Agency has submitted a request to CKB according to which they have to state its existence i.e. that they gave it for signature to the employees. CKB management has sent their reply stating that the Statement, a part of the Rulebook, is a draft and does not present an official document which could have been ready for signing. CKB representatives have committed themselves that after completing the final version of the Statement, they will submit it to the Agency for inspection and consideration. After the adoption of the final version, CKB representatives have submitted the

document to the Agency for consideration and comments, and this obligation was transferred to 2011.

- **Initiative for the initiation of the supervision inspection – natural person K. V.**

Natural person K. V has submitted an initiative for supervision inspection i.e. protection of right stating that unauthorized access to personal data of the natural person, the applicant, was carried out at the Real Estate Administration, branch office of Budva. According to the statement of the applicant, his/her personal data were given to a third party and later used in a court proceeding for solving property relations. As evidence, the applicant has submitted a List of immovables from 2007 where the personal name was added in handwriting, next to the data on the name of one of the owners. The agency has submitted an official memo to the applicant for clarification of several issues in the statement and after receiving the reply, it was concluded that the mentioned situation i.e. access to documents and initiation of court proceeding was done in 2007, i.e. in the period when there was no Personal Data Protection Law, and it was not possible to apply the existing Law retroactively. On the basis of previous facts, the Agency has declared itself non-competent for this initiative and informed the applicant.

- **Initiative for right protection – natural person S. Ž.**

Natural person S.Ž. has submitted an initiative for right protection to the Personal Data Protection Agency, as the representative of his minor child J.Ž., whose rights were allegedly violated. In the initiative it was stated that when exercising the right for taking a birth certificate for his/her minor child, at the branch office for administrative internal affairs, Podgorica, MIPA, the applicant has received the information that the unique personal identification number that the child of the applicant already has in certain documents (medical booklet) is owned by another minor child with the same date of birth. The applicant has requested that his child keeps the obtained ID number. Acting according to the initiative, the Supervision Inspection Department has carried out the inspection at the mentioned branch office and from the conversations and insight into the records system, it was determined that the mentioned minor is appearing for the first time at the competent authority for obtaining the ID number. Also, it was determined that because of the inexistence of the minor child, applicant, in the records, the competent body, ex officio, allocates a new ID number, i.e. the first one in accordance with the competences and affairs of the BO Podgorica.

On the basis of the determined legal competences of MIPA, i.e. the BO, the Supervision Inspection Department has made the record on inspection concluding that there were no violations of Personal Data Protection Law provisions in this case. An objection was submitted to the records by the applicant. The obligation was transferred to 2011.

### **3.8. Requests for giving consent**

Personal Data Protection Agency gives consent regarding establishment of personal data filing systems. Agency's consent is necessary before establishing a new personal data filing system, whereas already established filing systems have to be harmonised with the provisions of Personal Data Protection Law, and consent is not required for them.

In the current year Agency has been addressed by the following five subjects with the request for consent:

- BAR-KOD d.o.o.
- BAR-KOD SHOP d.o.o.
- PATRON DF d.o.o.
- TABACCO SHOP d.o.o.
- SUPREME COURT OF MONTENEGRO

Since the afore mentioned subjects have already had established data filing systems before Personal Data Protection Law's coming into force, they were ordered to harmonize already established filing systems with the provisions of the Law and they were told that they do not need consent of the Agency. By harmonizing the existing personal data filing systems and their submitting in the prescribed form they will be registered with the Agency as personal data filing system controllers.

### **3.9. International cooperation**

Data Protection Agency, in accordance with Article 50, item 9 of the Personal Data Protection Law, cooperates with bodies competent for supervision over personal data protection in other countries.

In 2010 Agency representatives visited the following institutions in the surroundings:

- Commissioner for Information of Public Importance and Personal Data Protection of Serbia,

- Personal Data Protection Agency in Bosnia and Herzegovina.
- Croatian Personal Data Protection Agency.

The goal of the above listed visits was that representatives of Montenegrin Agency become acquainted with legal, organizational and administrative structures of the Agencies in the surroundings.

Having regard to the fact that the Agency had just been established and begun with its operations, that the controls were ahead of us we were mainly interested to find out about the experiences from the field, work procedures and minutes preparation.

Special interest was shown for the issue of information system, that is, data bases which contain data on registers of all important institutions.

During these meetings we informed our colleagues about the previous progress which was accomplished in Montenegro, as well as plans, that is, future steps planned by the Personal Data Protection Agency.

This type of cooperation proved very useful, even necessary, especially having regard to the fact that the Agency is in the first year of its existence and that comparable practice and experiences of other countries are of great importance to it in the time to come.

### **3.10. Projects**

Twinning Project of the European Union is one of basic means for the development of institutions, which is especially used in the countries which have possible candidate status.

Personal Data Protection Agency is one of the beneficiaries of this programme.

Goals of Twinning Project are strengthening of capacities for personal data protection and implementation of legislation which refers to data protection in Montenegro. It consists of two components: legislation harmonization and organization of training on personal data protection.

Personal Data Protection Law will be considered, primarily with regard to transferring general Directive on Data Protection of the European Union (Directive 95/46/EC). In addition, recommendations for further harmonization of the Law will be designed.

Experts from Member States will: provide support in establishing system for registration of announcements for data inspectors; make its knowledge available when it comes to other common procedures of data protection bodies such as inspecting and handling claims; plan on education and training of the employees in the Personal Data Protection Agency will be developed, recommendations for amending the plan will be developed and additional training will be provided.

Personal Data Protection Training will be provided for: persons working for state authorities and local self governments; persons working for the various sectors institutions; employees working in private sector.

The project started at the end of November 2010 with the arrival of the Resident Twinning Advisor, expert for data protection from Germany who will work in the Agency during the whole project. Since December, Agency has been visited by experts engaged for shorter time period who have dealt with harmonization of Montenegrin Personal Data Protection Law with EU Directive. In addition, they have begun to review all relevant provisions of EU and Montenegrin legislation in order to identify gaps in transferring EU *acquis communautaire* and give recommendations, and they have also talked to the Agency employees about practical questions and daily work in the data protection body.

Project partners:

Montenegro: Agency for Personal Data Protection and Ministry of Interior and Public Administration.

EU Member States: Ludwig Boltzman Institute of Human Rights, Vienna, Austria and Information Commissioner of the Republic of Slovenia, Ljubljana.

Duration and financing:

The phase of project implementation started in December 2010 and it will last 15 months. IPA Twinning budget amounts to 700.000 €.

The Project is financed from the IPA Programme 2009.

### **3.11. Public character of work and cooperation with media**

Expansion of knowledge on personal data protection within the framework of communication with public is one of the instruments which enable efficiency of work of each supervisory body which deals with personal data protection. Due to this fact, great attention in the Agency is paid to cooperation with media.

Besides, having regard to the importance of the public character of work, the Agency is completely devoted to improving cooperation with all media. In that respect, we can state with satisfaction that the issue of personal data protection is a topic whose presence in the public is increasing, which is by its own virtue encouraging.

In the reporting period media regularly monitored activities on formation and work of the Agency and published Agency opinions on certain issues.

The Agency has established basic infrastructure of communication and information system, such as telephone, telefax and email address, though not web address.

### 3.12. Budget, business premises and equipment

Funds for the work of Personal Data Protection Agency, under Article 63 of the Personal Data Protection Law were provided from the Budget of Montenegro.

Funds amounting 228.941.14 € were allocated for the Agency work by the 2010 Budget Plan.

In accordance with the Law on Budget 2010 budget amounting 84.885.27 € was allocated to the Agency listed by the following items:

#### Programme: Administration

4	Expenditures	84.885,27
41	Current expenditures	77.885,27
411	Gross salaries and contributions charged from employer	40.284,77
4111	Net salaries	24.239,60
4112	Tax on salaries	3.256,07
4113	Contributions charged from employee	8.682,84
4114	Contributions charged from the employer	3.617,85
4115	Municipal surtax	488,41
412	Other personal income	9.378,75
4121	Meal allowance	1.512,50
4122	Annual leave allowance	866,25
4129	Other allowances	7.000,00

413	Expenditures for material and services	28.221,75
4131	Expenditures for materials	5.000,00
4132	Expenditures for business trips	3.600,00
4133	Expenditures for representation	2.000,00
4134	Expenditures for energy	2.621,75
4135	Expenditures for telephone services	3.000,00
4136	Expenditures for postal services	500,00
4139	Contracted services	11.500,00
441	Capital expenditures	7.000,00
4415	Expenditures for equipment	7.000,00

Funds provided from the Budget were not sufficient for meeting all needs of the Agency with regard to the creating working conditions and regular payment of salaries to the existing number of employees

In this respect, we have addressed Ministry of Finance of Montenegro so to find a way of providing financial support aiming at free functioning of the Agency by the end of the current budget year.

Existing financial situation has been overcome by allocating amount of 144.055,87 EUR to the Agency budget from the expenditure of 4710 – current budget reserve in July 2010.

Funds have been distributed by items in the following table:

Programme: Administration

4111	Net salaries	52.689,37
4112	Tax on salaries	7.077,68
4113	Contributions charged from employee	18.873,80
4114	Contributions charged from employer	8.021,37
4115	Municipal surtax	1.061,65
4135	Expenditures for telephone services	2.100,00
4136	Expenditures for postal services	500,00
4139	Contracted services	14.700,00
4415	Expenditures for equipment	39.532,00

Allocated funds have enabled Agency to implement public procurement procedures in order to create conditions for work and free functioning.

Applying shopping method, during 2010, an open procedure for procurement of one motor passenger vehicle as well as five procedures for procurement of small value things were implemented and they included: procurement of office furniture, computers and computer equipment, air conditioners and works on adaptation of the Agency premises.

#### **4. ESTIMATE OF THE STATE**

The reporting period, which is also the first year of functioning of the Personal Data Protection Agency, is too short to give a comprehensive and completed assessment of the state regarding respect of personal data protection.

Initial challenges, which we were successfully overcoming, were not the reason not to identify the main or the most common problems in this area.

It seems that today personal data are available to a high extent. The age of social networks has made possible for everyone to take a peek into the most private moments of lives of other people who are giving information about their cousins and friends every day. It does not include only close people, but they share information about friends of friends of their friends, although you might not even greet these people on the street.

Despite not knowing them personally, you follow the life of other people via Internet, keeping track of all the important events in their lives, and you feel as if you knew them for years. Private life has become public. While disclosing your own private life is one matter, violation of other people's privacy is a completely different matter. Therefore, personal data protection is very important for all.

Appropriate personal data protection is one of the challenges for Montenegro on its way towards EU.

The fact that we, in Montenegro, are the first to deal with personal data protection according to the standards of European Union is both an aggravating



and extenuating circumstance. It is extenuating because, tentatively, we have blank paper in front of us and it is up to us what to write on it. Certainly, it is aggravating since a small number of people, even in public authorities, have enough knowledge of this area. Unfortunately, public have even less knowledge that they are the owners of their data and they have the right to be informed of who is processing their data and in which manner. This is precisely the reason why, in the previous year, we did not have a larger number of right protection requests. Of course, we have to keep in mind that this number was not larger in other countries from the region.

From the contacts we had with the colleagues from Belgrade, Sarajevo and Zagreb, we found out that they had similar or identical problems. We heard from them that our position is a little better because of the quality and precision of the Personal Data Protection Law.

It is encouraging that, as the year was ending, people knew more and more about us, and thus the number of opinion requests was increasing, from public authorities, commercial entities and citizens as well.

The problem that was expected but also understandable is that there is not a valid estimate of the number of data filing systems in Montenegro. Considering that the Ministry of Interior and Public Administration has determined a form, at the end of the year, that all the owners of personal data filing systems need to fill in, so that we can have them in our register as well as those who are planning to establish them, with the obligatory consent from the Agency, it is certain that in the following period we will make a significant step towards the aim of learning this number.

EU experts within the Twinning project with the Agency as the Beneficiary have identified 128 laws which need to be harmonised with their standards in the area of personal data protection, which means that there is a lot of work ahead of all of us.

Lack of funds for the development of a quality system for keeping the Register of personal data filing system in an electronic form, as well as for its protection, is the reason why this job was not done. Also, funding is the reason why in the reporting period the website was not designed, in which all information on our work, manner of processing, keeping, using, amending, erasing, protecting and giving data could be found.

Supervision inspections so far, due to the above mentioned, have been more of a preventive and educational character than repressive. It certainly does not mean

that there were no explicit orders, as well as clear opinions, and it does not mean that we will not apply the legally prescribed measures if the controlled entities do not act according to the ordered tasks.

Irregularities most often include inappropriately installed video surveillance, manner of keeping records on entering and exiting business premises, as well as personal data protection on a larger scale than necessary in order to achieve the purpose.

In the previous year, one of the lacking factors was that the Ministry of Interior and Public Administration did not determine manner of designating and protecting special categories of personal data. This fact is one of the reasons why data such as health data, racial and ethnic origin, political, religions and other beliefs, misdemeanour and criminal records, sex orientation and similar were so easily available to the public.

There are numerous situations of understanding the role of the Agency as the authority that keeps personal data, which is wrong. Agency protects the rights of citizens and carries out supervision of processing and using personal data.

Attempts of opposing Personal Data Protection Law and Law on Free Access to Information are very frequent, which is not the case only in Montenegro, but also in countries with a longer democratic tradition than ours. This is a matter which must be resolved but, at the beginning, we need to stop thinking that the right to privacy and the right of public to know can be completely matched, and if we bring them closer through standards and principle of balance we will make a great step forward in this area.

The state in the area of personal data protection, in most of the controlled entities, is unacceptable for the Agency. Lack of knowledge regarding regulations, non-existence of rules and procedures and plans for personal data protection are the most common shortcomings in personal data processing.

On the other hand, we are satisfied with the relations with the representatives of the controlled entities towards the activities of the Agency. Their cooperation shown towards the inspectors of the Agency is encouraging.

Agency is not familiar with the total number of personal data filing systems and their controllers, which means that the citizens are not aware of all the places where their data are being collected.

During supervision inspection, it was determined that defined internal authorisations for accessing personal data do not exist.

Citizens do not have sufficient knowledge regarding their right to personal data protection.

Very often, manner of keeping records on entering and exiting business premises is not in accordance with the Personal Data Protection Law.

Very often, use of video surveillance is not in accordance with the Personal Data Protection Law.

Personal data filing system controllers do not have enough knowledge of the Personal Data Protection Law.

Continuous education for citizens is necessary.

## **PERSONAL DATA PROTECTION AGENCY**