



REPORT

ON THE STATE OF PERSONAL DATA PROTECTION IN MONTENEGRO IN 2011

Podgorica, March 2012

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INTRODUCTION

In accordance with Article 62, paragraph 1 of the Personal Data Protection Law (Official Gazette of Montenegro 70/09), the Personal Data Protection Agency submits the Report on the state of personal data protection for the year 2011.

Starting from the Conclusions of the Parliament of Montenegro (Official Gazette of Montenegro 28/11) the Agency, pursuant to Article 62, paragraph 2 of the Law, submitted the Interim Report with the overview of activities carried out in the implementation of the Law and improving the state in the area of personal data protection for the period from 01 January to 01 July 2011.

Interim Report of the Agency contained comments with activities carried out and measures undertaken for all of the individual items of the Conclusion. The Report illustrated the following: Work Plan, statistical data (number of opinions, recommendations, approvals, requests for the protection of rights, supervisions carried out, follow-up supervisions, reported personal data filing systems), analysis for the harmonisation of laws with the Personal Data Protection Law, activities in the media and other types of promotion of the Personal Data Protection Law, activities based on education, international cooperation of the Agency as well as the activities planned in the second half of 2011.

The Committee for Human Rights and Freedoms of the Parliament of Montenegro, on the session held on 15 September 2011, has analysed the Special Report. After the introductory notes of the presenters of the Report and a discussion of all the members of the Committee, with nine “for” and two “sustained” votes adopted the Special Report on the state of personal data protection in Montenegro with an overview of activities carried out in the implementation of the Law and improvement of the state in the field of personal data protection for the period from 1 January to 1 July 2011. The Special Report on the state of personal data protection, adopted on the Parliamentary plenum, contains an overview of the work for the period of six months and the ambition to raise the degree of personal data protection in Montenegro to a higher level with the work of the Agency and all competent bodies.

With the aim of presenting fully the work of the Agency in 2011, information contained in the Special Report will be an integral part of the second regular Report on the state of personal data protection.

One of the most important aims of the Agency is to be recognizable as a strong and reliable mechanism for personal data protection. Personal data protection, in the part concerning privacy protection, is one of the fundamental human rights and it is necessary for the proper functioning of every democratic society. The basic privacy protection standards, ratified international treaties, agreements and Conventions are an integral part of Montenegro's legal system.

In the reporting year, numerous activities were undertaken in order to inform citizens, media, public and NGO sector and all personal data filing system controllers of their legal obligations and rights arising from the Law. Personal Data Protection Law ensures the respect of the right to privacy regarding personal data processing. The Law establishes the basic principles of personal data protection such as the right to processing, aim of processing, transfer of data abroad, data security as well as the establishment of an independent supervisory body

The encouraging fact is that personal data protection is given an increasing significance every day so the improvements are evident and measurable. Joint actions of all entities are the precondition for raising the awareness of the significance of personal data protection, which is still not satisfactory in Montenegro, to a higher level.



1. CONCLUSION OF THE PARLIAMENT OF MONTENEGRO („Official Gazette of Montenegro 28/11)

The Parliament of Montenegro, in its 24th assembly, during the 5th meeting of the regular spring session, on 26 May 2011, regarding the 2010 Work Report of the Agency for Personal Data Protection and the State of Personal Data Protection, has adopted the following conclusions:

1. The 2010 Work Report of the Agency for Personal Data Protection and the State of Personal Data Protection is approved.
2. State in the field of personal data protection is not on a satisfactory level both formally and factually.
3. Legal obligation is that the Agency Council, pursuant to Article 56 of the Law, adopts the annual work plan, so the Parliament finds that in the Report there is no information regarding the work plan for 2010, nor for 2011, so it is not known, due to the estimation of state (p. 1 of the Agency Report) which activities are planned for the improvement in this area.
4. The implementation of the Law, in adopting secondary legislation (without which there is no implementation of the Law), was late during the reporting period.
5. Due to the lack of information on the total number of personal data filing systems, from the point of view of the obligation of the Agency to supervise the implementation of the Law, which is indicative, more efficient compliance and meeting of the obligations of all the entities, defined in the Personal Data Protection Law, is necessary.
6. As the information is the assumption of introducing citizens and institutions with the existence, work and competences of the Agency, the development of the website of the Agency is necessary as soon as possible, so that it can establish contacts with the public. The Agency should intensify the activities of educating the citizens and informing the public on the right to personal data protection, as well as the competences of the Agency, as the authority for supervision over the

implementation of the Law by: developing a short guide for personal data protection which would be distributed to state authorities, institutions, commercial entities and which would be available on the website, intensifying activities in media and other forms of promoting the Personal Data Protection Law and work of the Agency, organizing public discussions in cities of Montenegro and more often press conferences.

7. In the reporting period, the Agency has not managed to, by using the allocated funds, make itself and its activities regarding the implementation of the Law visible to the public, due to which it is necessary that:

- the Agency in cooperation with competent state authorities, ensures material, financial and personnel resources necessary for performing activities prescribed by the Law,
- the Agency makes an effort to ensure certain resources through projects and from international organisations and to establish cooperation with the EU experts and
- the Agency delivers a detailed overview of the budget on the spending of funds in the following report.

8. For the reasons of implementing activities which focused more on education, taking into consideration the beginning of the implementation of the Law and functioning of the Agency, full implementation of all activities determined by the Law is necessary.

9. The Report contains detailed information on supervisions carried out, but does not contain the information whether additional supervision was carried out in order to determine if the entities who have been ordered certain actions actually implemented them with the aim of improving the state and meeting criteria prescribed by the Law. For that reason, in the following period, it is necessary that the Personal Data Protection Agency carries out the inspection of adherence to and implementation of actions ordered to the entities during the first inspection.

10. The total number of personal data filing systems and their controllers is unknown, which means that citizens have no information on where their data are being stored and taking into consideration that the Ministry of Interior has adopted the form which all the controllers should fill in, so that the Agency can have them in its register, as well as the ones who are beginning the establishment of filing

systems, it is necessary to develop the Central Register of personal data filing system in the following period.

11. On the basis of available information in this area from the comparative analysis in the regional countries, in comparison to the state in our country, they had significant progress, so it is estimated that the experiences of the regional countries can significantly assist the Agency. For this reason it is necessary to intensify cooperation with similar institutions from the region in the following period with the aim of exchanging experiences.

12. It is estimated that, based on the information obtained from the competent Ministry of Internal Affairs, the assumptions for the independent work of the Agency are obtained with:

- the adoption of the Decree on IT security measures (8 October 2010) and
- Rulebook on the manner of designating and safeguarding special categories of personal data (18 February 2011) as well as
- future harmonisation of legislation (the remaining 5% of non-harmonised norms will be harmonised with EU *acquis* during the II quarter of 2011)

13. It is necessary that the Agency and competent state authorities in the following period analyse the existing legislation in this area (Personal Data Protection Law, Law on Information Confidentiality and Law on Free Access to Information) and carry out a number of activities in harmonizing these and other laws.

14. In the aim of improving the state in establishing efficient and sustainable system of personal data protection, in addition to the continuation of the ones that have already begun, the priorities of the Agency should be directed towards ensuring the following:

- drafting the Work Plan for 2011;
- development of the website;
- drafting the Guide for personal data protection and its distribution to state authorities, commercial entities and its availability on the website;
- development of the Central register of personal data filing systems;
- intensifying activities on promoting the right to personal data protection;
- strengthening administrative capacities of the Agency;
- implementing training activities of data controllers;
- strengthening cooperation with state authorities, NGOs and media;

- international and regional cooperation; as well as
- the cooperation with state authorities on harmonization of the Personal Data Protection Law with the EU *acquis*, as well as its harmonization with the Law on Information Confidentiality and Law on Free Access to Information as well as other laws in order to create the requirements for the independent functioning of the Agency.

15. The Agency will, pursuant to the Personal Data Protection Law (Article 62, paragraph 2), submit to the Parliament the Interim Report on the state of personal data protection until the 1 July 2011, with an overview of implemented activities on the implementation of the Law and improving the state in the field of personal data protection, which would contribute significantly to the acceptance of standards existing in developed democratic countries, as well as meeting the criteria on our path to EU, in accordance with the findings and recommendations contained in the Analytical Report of European Commission.

2. GENERAL LEGAL FRAMEWORK

2.1. Personal Data Protection

Personal data protection is ensured through the implementation of norms of the legal framework consisting of the Constitution, ratified international agreements and generally accepted rules of international law and the national legislation.

Preamble of the Constitution of Montenegro from 2007 states 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 are directly applicable when they regulate the relations differently from the internal legislation.

One of the fundamental human rights is the right to privacy. Right to privacy is elaborated within Article 40 based on which each person is guaranteed the 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 can 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, and it prohibits usage of personal data for purposes other than those for which they were collected and it gives the right to everyone to be informed of the collected personal data about him or her and the right to court protection in case of abuse.

It is Personal Data Protection Law, 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 the 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 which 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.

At the end, it should be noted that EU Directive which refers to the data protection in the area of electronic communication, 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.

2.2. Harmonisation of legislation

Adoption and harmonisation of the Law on Free Access to Information, Law on Information Confidentiality and Personal Data Protection Law “is aimed at ensuring the balance between the rights and interests of citizens and the public to access information and the need to protect an individual’s privacy and prevent harmful consequences for public interests“.

Establishing a balance between the right of citizens and the public “to know” or to have access to information in the possession of public authorities and the right to privacy is achieved in practice by implementing the standard of “prescribed limitation regime, or exceptions regarding the right to access information” as stated in the Law on Free Access to Information.

On the other hand, the need to protect the state and ensure efficiency of its individual policies, requires certain information to be classified as confidential and in that way protected from publishing for a certain period of time. It is obvious that the three laws are not mutually aligned, which presents a difficulty in exercising the right to access information i.e. documents held by public authorities.

Having in mind the above mentioned, Work Programme of the Government of Montenegro for 2011 envisaged the review of the Analysis on the amendments to the Law on Free Access to Information, Law on Information Confidentiality and Personal Data Protection Law, and the bodies responsible for their development are the Ministry of Culture, Ministry of Interior and Ministry of Defence. In drafting the Analysis, in addition to the above mentioned ministries, the representatives of the Human Resource Management Authority, OSCE and NGO Network for the Affirmation of NGO Sector participated as well. Personal Data Protection Agency was represented by the Council member Mr. Radenko Lacmanovic and the Agency Director, Bojan Obrenovic.

Interdepartmental working group was guided by established international standards contained in provisions of International Charter on Civil and Political Rights (ICCPR), European Charter on Human Rights and Convention of the Council of Europe on Access to Official Documents. In addition, the estimations and recommendations of experts presented at the Round Table „Support to the

implementation of the Law on Free Access to Information“ held in Podgorica on 12 October 2010, were taken into consideration.

Personal Data Protection Law is largely harmonised with relevant international documents and regulations referring to the area of personal data protection and personality protection, and particularly with the following:

- European Convention on Protection of Human Rights and Fundamental Freedoms (1959) which, in its Article 8 deals with the issue of the right to respect private and family life;
- Directive of the European Parliament and Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (95/46 of 24 October 1995);
- Directive of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector (2002/58/EC of 12 July 2002).
- Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC of 15 March 2006;
- European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and
- Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Council member, Mr. Aleksa Ivanovic, was a member of the working group responsible for drafting the Law on Free Access to Information.

The Law on Free Access to Information and the Personal Data Protection Law contain different and incompatible solutions, as follows:

- it is questionable how the access to information is allowed without violating provisions of Article 9, item 2 of the Personal Data Protection Law;
- these two laws do not refer to each other regarding the resolution of certain issues, which contributes to their mutual collision.

Implementation of the Law is the best way in practice to see its good solutions and shortcomings. With the aim of developing a quality solution, the working group which included the representatives of the Agency developed the draft Law on Amendments to the Personal Data Protection Law. Draft Law, at the time this report was submitted, was in the public discussion process.

Taking into consideration the fact that the Personal Data Protection Law is systemic, during 2011, the Agency drafted the analysis of the laws to be aligned with it, in cooperation with the experts of the Twinning Project “Implementation of the Personal Data Protection Strategy in Montenegro”. The analyses of the following laws have been delivered to the proposers:

- Law on Voters Registers;
- Law on Central Population Register;
- Law on Personal Data Filing Systems in Health Care
- Law on Urgent Medical Assistance;
- Law on Civil Servants and State Employees;
- Law on Aliens;
- Law on Registers of Birth, Death and Marriages;
- Law on Social and Child Welfare;
- Law on Intake and Use of Biological Samples;
- Law on E-commerce;
- Law on Health Care;
- Law on Electronic Communications;
- Law on the Prevention of Conflict of Interests;
- Law on Consolidated Registration and System of Reporting on Calculation and Collection of Taxes Contributions;
- Law on the National Security Agency.

Agency sent official letters to the ministries requesting information on activities based on the analysis sent. However, by the time this Report was submitted, we did not receive an answer.

3. PERSONAL DATA PROTECTION AGENCY

3.1. Competences

Personal Data Protection Agency has a legal person capacity, and it is established as the supervisory authority in the implementation of provisions of the Personal Data Protection Law. It is independent and autonomous in performing its affairs.

The Agency performs supervision over the protection of personal data in accordance with the Law; decides on requests for protection of rights; delivers opinions with regards to the application of this law; gives consent with regards to the establishment of personal data filing systems; delivers opinions in the case of doubt whether a set of personal data is considered a filing system within the meaning of this law; monitors the application of organisational and technical measures for the protection of personal data and proposes improvement of such measures; puts forward proposals and offers recommendations for the improvement in the protection of personal data; delivers opinions as to whether a specific way of personal data processing puts rights and freedoms of individuals at risk; cooperates with authorities responsible for supervising the protection of personal data in other countries; cooperates with competent state authorities in the process of development of regulations relating to protection of personal data; puts forward proposals for assessment of constitutionality of laws and constitutionality and lawfulness of other regulations and general acts which govern the issues of personal data processing and performs other tasks in accordance with this law.

The Council of the Agency adopts the rules of the Agency; adopts the Statute and an internal act on working posts, with the consent of the working body referred to in Article 52 paragraph 2 of the Law, as well as other acts of the Agency; draws up annual and special reports on the situation regarding the protection of personal data; establishes the annual work plan and the annual report on the work of the Agency; establishes a proposal of the financial plan and balance sheet; makes decisions on requests for protection of rights and in other cases following supervision and performs other tasks established by the law and the Statute of the Agency.

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

3.2. Authorities

The Agency performs supervision in accordance with the Personal Data Protection Law through its inspectors, who are authorised to perform the tasks of supervision in accordance with the Rulebook on Internal Organisation and Job Description.

Inspection supervision *ex officio* is carried through scheduled supervision according to the Supervision Plan, adopted annually or monthly at the level of the Agency, as well as unscheduled supervision carried out on the basis of the request for the protection of rights of natural persons. Any person can submit an initiative for initiating the supervision procedure.

The inspector shall have the right to access personal data contained in personal data filing systems, regardless of whether the records of such filing systems are kept in the Register, as well as the right to access files and other documents relating to the processing of personal data and to electronic means of personal data processing regardless of the confidentiality level.

In the performance of supervision the Agency shall have the authority to: order that irregularities in the processing of personal data be eliminated; impose a temporary ban on unlawful processing of personal data; order the erasure of personal data collected without legal grounds; impose a ban on transfer of personal data from Montenegro or disclosure of data to recipients of personal data in contravention to this law; impose a ban on entrusting of personal data processing where the processor of personal data does not meet the requirements with regards to the protection of personal data or where entrusting of such tasks was carried out in contravention to the Law.

These authorities create a real assumption that the Agency is dealing with personal data protection appropriately, and independence and impartiality is ensured through other solutions, which is one of the European standards.

3.3. Internal organisation and number of employees

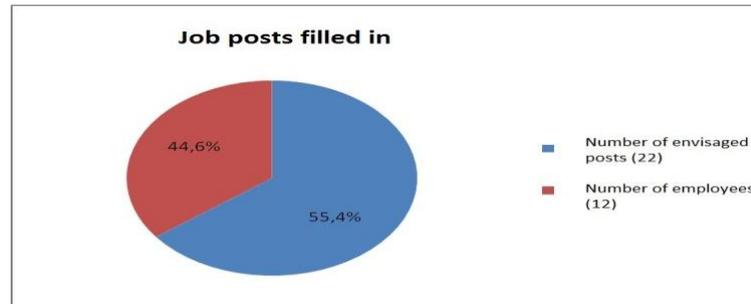
Bodies of the Agency are the Council, with two members and the Director. The Chairman and the members are appointed by the Parliament and the Agency Director is appointed by the Council on the basis of the public vacancy.

Organisational units of the Agency are the Department for Supervision and Personal Data Protection and Technical Service of the Agency.

Department for Supervision and Personal Data Protection consists of: Section for supervision; Section for the protection of rights and requirements for personal data processing; Section for registers and IT; Section for cooperation and data safeguards.

For the performance of affairs from the competences of the Agency, 22 jobs are described with the total of 22 employees as follows: Agency Director, Deputy Agency Director, Head Inspector – Head of Department, Inspector for affairs of inspection supervision in the area of personal data protection, Head of Section, advisor for administrative affairs, Head of Section, advisor for monitoring implementation of regulation, advisor for the development and improvement of personal data safeguards, Head of Section - manager of the Register, Technician – Operator for entry and keeping (1), Secretary of the Technical Service (1), Head accountant (1), Head bookkeeper – balance-sheet accountant (1), Archivist-documents recorder (1), Technical secretary–administrator (2), Driver-mail deliverer (1), Hygienist (1).

Graphical illustration No. 1



Personal Data Protection Agency, by the end of the reporting period, had 12 out of 22 employees, which in percentages amounts to 54.5% . Structure of the employees is as follows: director, secretary of the Technical Service, Head of Supervision Department, three inspectors, two advisors, two technical secretaries, operator for entry of data and a driver. The Agency employed a trainee in June of 2011 for professional training, for a period of one year, who is a graduated lawyer.

At the end of 2011, certain activities were undertaken for the development of the new Rulebook on Internal Organisation and Job Descriptions. In addition to the competences prescribed by law, the need for the adoption of the new Rulebook arose from the Analysis of the Rulebook on Internal Organisation and Job Descriptions of the Personal Data Protection Agency as well as the Follow-up recommendations related to the draft Rulebook, which were made by the short-term experts of the Twinning Project “Implementation of the Personal Data Protection Strategy”.

The important requirements for the full implementation of this Project are: the number of employees at the Agency to be trained, appropriate organisation and job description and equipping the Agency with priority professional staff.

This draft Rulebook was prepared in accordance with the recommendations and guidelines of EU experts, such as: eliminating one level of hierarchy, eliminating the position of deputy director, clearly defining the sections, introducing the position of a PR advisor, increasing the number of controllers, increasing the number of IT experts, etc. In this regard, a different type of organisation of the Agency was determined by eliminating the Supervision Department, by eliminating the position of the deputy director, and also by merging two sections into one – Section for Case Handling and Appeals.

The number of inspectors was increased by one at the Section for Supervision, and in the Section for IT and Register, the position of an IT advisor was introduced as well as the position of the PR advisor at the Section for Case Handling and Complaints, the number of legal advisors is increased by two while the position of the head of Section is eliminated by merging two sections into one.

In the aim of creating adequate conditions for efficient and economic work and successful performance of numerous tasks from the competences of the Agency, the draft of this Rulebook is prepared, so that its adoption would create conditions for the promotion of this body's functioning.

According to the draft Rulebook, the organisational structure of the Agency consists of three Sections: Section for Supervision, Section for IT and Register and Section for Case Handling and Complaints and Technical Service. In the course of developing organisational solutions, we enabled functional grouping of affairs from the scope of work of the Agency according to the type, complexity, nature and interconnectivity.

The division according to organisational units is as follows: In the Section for Supervision we have 5 positions with 5 employees as follows: Head of Section (1), Inspector (for activities of inspection supervision in the area of personal data protection) (3), Inspector (for affairs of inspection supervision in the area of personal data protection) (1); In the Section for IT and Register we have three position and three employees as follows: Head of Section – Register Manager (1), Advisor for IT (1) and Technician- operator for entry and maintenance (1); in the Section for Case Handling and Complaints we have eight positions and eight employees as follows: Head of Section for Case Handling and Complains (1), Legal advisor (2), Legal advisor (2), Advisor for development and promotion of personal data protection measures (1), PR officer (1), Officer for general affairs (1). Legal advisors are grouped according to the requirements so we have two legal advisors with three years of working experience and two legal advisors with two years of working experience and English language knowledge; in the Technical Service of the Agency we have seven positions and seven employees as follows: Secretary of the Technical Service (1), Accountant (1), Bookkeeper (1), Archivist (1), Technical secretary –administrator (2), Driver-mail deliverer (1). It is envisaged that one or several trainees with university degree or high school diploma may be hired at the Agency.

The draft Rulebook contains the job description of 25 positions and 25 employees.

The aim is to increase the number of employees in 2012 and the positions of the Head of Section for Register, advisor for administrative affairs and head of accounting are set as priorities.

At the time of drafting the Report, the Council adopted and the Administrative Committee of the Parliament of Montenegro approved the draft Rulebook on Job Descriptions.

3.4. Agency Budget for 2011

Itemized overview of the Budget is as follows:

	Item	Allocated
411	Gross salaries and contributions of the employer	266,982.17
412	Other income	10,759.36
413	Expenditures for material and services	
4131	Expenditures for material	13,150.00
4132	Expenditures for official travel	26,980.00
4133	Expenditures for representation	3,000.00
4134	Expenditures for energy	5,760.00
4135	Expenditures for phone services	13,400.00
4136	Expenditures for postal services	1,010.00
4137	Bank services and foreign exchange loss	300.00
4138	Transportation services	1,800.00
4139	Contractual services	25,200.00
414	Equipment maintenance	1,800.00
4415	Capital expenditures (equipment)	33,800.00

Total Budget of the Agency in 2011 amounted to 403.941,53 €.

At the end of the year, the remaining amount left over in the item of gross expenditures was 47,130.58 €. Namely, although the Agency managed the funds enabling hiring more people, we did not receive the approval of the Ministry of Finance to do so.



3.5. Work Plan

Personal Data Protection Agency adopted the Work Plan for 2011. It envisages activities carried out in 2011.

Work Plan for 2011 was adopted on 27 January 2011 at the 2nd meeting of the Agency Council and it contains the following activities:

- Work Plan of the DEPARTMENT OF SUPERVISION AND PERSONAL DATA PROTECTION

Work Plan of the Section for Supervision:

- Drafting monthly, quarterly, annual and special reports on the work of the Section for Supervision and other affairs from the scope of work of this Section;
- Carry out inspection supervision *ex officio*:
 - a. scheduled supervision:
 - b. unscheduled supervision:
- Carry out inspection supervision upon the request to rights protection:
- Act according to the requests for issuing opinions;
- Adopt the decision on providing approval regarding the establishment of personal data filing systems;
- Give proposals and recommendations for the improvement of personal data protection;
- Establish cooperation with bodies competent for supervision of personal data protection in other countries;
- Establish cooperation with competent public authorities in the procedure of preparing regulations related to personal data protection;
- Undertake necessary activities in training the employees of the Personal Data Protection Agency;
- Undertake necessary activities in training the employees of personal data filing system controllers.

Section for protection of rights and conditions for personal data processing:

- Draft the acts of the Agency regarding administrative disputes as well as affairs regarding the execution of decisions of the Agency and procedure of misdemeanour responsibility for the violation of the law;

- Draft acts regarding the constitutional claims in relation to exercise of right to data protection, monitor the case law in the area of data protection regarding administrative disputes and constitutional claims at competent courts;
- Monitor regulations regarding the exercise of data protection right and preparation of acts initiating the amendment of these regulations and their harmonisation with the regulations and standards of European and international law;
- Draft annual and special reports and other affairs from the scope of work of this Section.

Section for registers and IT:

- Continuously perform IT and other affairs regarding the Register and other records kept at the Agency;
- Draft documents with the list of filing systems for annual publications, monitor the implementation of IT regarding data protection and propose measures for improvement;
- Draft annual and special reports and other affairs from the scope of work of this Section.
- Establish cooperation and give instructions and professional assistance to controllers of individual filing systems and data processors.

Section for cooperation and data safeguards:

- Prepare acts of the Agency giving initiative for adoption or amendment of regulations as well as other proposals and recommendations with the aim to implement and improve personal data safeguards and integration of international and European standards into the legal system;
- Implement the procedure for determining the meeting of conditions for transfer of data from Montenegro and giving approval for transfer of these data;
- Draft proposals used by the Agency to give opinions regarding the establishment of new filing systems, in cases when new IT is being introduced for personal data processing,
- Draft acts used by the Agency to provide instructions in the implementation of personal data protection regulations, inform the public

- via manuals and other publications and material, media, internet, public discussions or in another appropriate manner;
- Draft documentation of the Section for the actions of the Agency upon requests for access to information on the work of the Agency, monitor case law in the area of data protection, regarding administrative disputes and constitutional claims at competent courts and international case law and other practice and other affairs from the scope of work of this Section;
 - Draft annual and special report from the scope of work of this Section.

Work Plan of the Technical Service of the Agency

- Draft proposals of individual legal acts regarding employment and exercising rights, duties and responsibilities from employment at the Agency;
- Draft Rulebook on appraisals of individual performance of employees of the Agency with a work estimate of employees monthly or annually;
- Undertake safety measures for the protection of health at work and insurance of employees;
- Implement public procurement procedure;
- Draft the financial plan of the Agency aimed at timely and specifically using the funds in accordance with the budget and financial plan;
- Keep business books, periodic accruals and final accounts, and administrative, technical, office, filing, typing and auxiliary affairs;
- Draft contracts concluded by public procurement employees on behalf of the Agency;
- Draft the List of categories of archive material and deadlines for their storage;
- Draft Rulebook on Archive and Office Management;
- Pursuant to the Rulebook on Official ID, develop official authorisation for employees;
- Draft the Report on the work of the Agency and state of personal data protection for 2010;
- Establish a standing working group monitoring the legislation and pointing out the need for law amendments;

- With the support of the Twinning Project draft the final flyer about the Agency and its competences;
- Develop a webpage for the internet presentation of the Agency and update it continuously.



4. TWINING PROJECT

In a short period of time, personal data protection has become a very serious matter in Montenegro. In the reporting period, a large number of issues was discussed and also covered by media, such as access of law enforcement authorities to data of mobile operators, confidentiality of census papers or publication of personal registry numbers of political party donors. This indicates that increasing importance is being given to personal data protection. Importance of personal data protection is also recognised in EU which is financing the Twinning Project “Implementation of Personal Data Protection Strategy in Montenegro”. This project is being implemented by Austria as senior and Slovenia as a junior partner from the EU side. Experts working in personal data protection field from Austria, Slovenia and other Member States cooperate together with the Personal Data Protection Agency, Ministry of Interior and other authorities.



After the implementation of the first half of the total duration of the project (total implementation period is 15 months), partners have presented the media their previous work and future plans on 14 June 2011 at the Embassy of Austria. In addition, organising additional public events such as discussions and conferences during the second half of the project implementation was envisaged. For example, it was envisaged to organise a public discussion on appropriate balance between transparency and free access to information on one hand and appropriate privacy protection and personal data on the other.

In 2011, 73% of the Twinning Project was implemented while the second part will be continued in 2012. Twinning project was suspended on 30 November 2011. Requirements for the continuation were the amendments to the Rulebook on Internal Organisation according to the recommendations of experts and filing in priority posts. Requirements were met and the EU Delegation representatives were informed thereof.

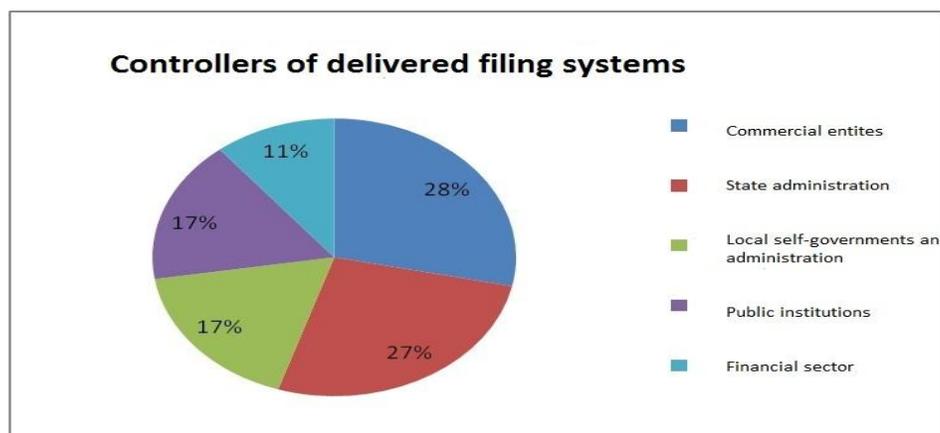
5. RECORDS ON PERSONAL DATA FILING SYSTEMS

5.1. Delivered personal data filing systems

Taking into consideration the fact that the area of personal data protection has been recently established in the law, education of personal data filing system controllers was necessary. Therefore, a quality communication between the Agency, as the supervisory body, and personal data filing system controllers was the first prerequisite for a systemic personal data protection which makes an important link in the chain of privacy protection. It is estimated that there are 30 000 controllers and more than 120 000 filing systems in Montenegro which clearly shows the importance of strategic actions used to legitimize the legal order and thus guarantee the citizens personal data protection and right to privacy. We believe that educational and preventive approach has proven as a good solution.

In this regard, in 2011, we have sent official letter to 245 controllers, which, in addition to regular inspection supervision, have resulted in the registration of 462 filing systems from 120 controllers. The number of controllers and filing systems by sectors is as follows: public administration 32 (133 filing systems), public institutions 20 (60 filing systems), local self-governments and governments 21 (101 filing systems), commercial entities 34 (95 filing systems), financial sector 13 (73 filing systems).

Graphical illustration No. 2.



We would like to point out that the first filing system was registered on 12 January 2011 by the Central Depository Agency AD Podgorica. Progress is obvious considering that in the first half of 2011, the Personal Data Protection Agency was delivered the total of 112 filing system by 28 controllers. Records on the filing systems have been delivered on the form prescribed by the competent ministry.

In addition, 30 meetings were organised at the premises of the Agency (with 7 representatives from public administration, 4 from the public sector, 2 from local self-government and 17 from commercial entities) during this year.

Electronic access to documents which directly refers to the form and content of the legal provisions from Article 26 of the Law, which particularly concern the filling in of records on personal data, was enabled through the activation of the Agency's website. The website also contains the Rulebook on the form and manner of keeping records on personal data filing systems, issued by the Ministry of Interior (Official Gazette of Montenegro 73/10).

Practice has indicated the need to develop the Instruction for filling in the form of the records on personal data filing systems. Our intention was to provide clear input in order to have a minimum of mistakes by merging the Rulebook on keeping the records of filing systems and summarized answers to most frequently asked questions and dilemmas with regard to this legal obligations. Publication of the Instruction on the website of the Agency has shortened the period of time of filing system controllers complying with their obligation. The controllers that have not been cooperating have been warned through the notifications of inspection supervision.

It is important to state that the registration of controllers means that the obligations they have according to the Law are met, with regard to reporting on the information from the personal data filing system records. The registration itself does not exclude the possibility of the Agency to verify the lawfulness of personal data processing through inspection supervision or ex officio, upon the request for the protection of rights.

There was certain lack of precision in the delivered filing systems which should be worked on in the following period. Namely, it is necessary to explicitly

determine the obligation of the controller who, according to Article 9, item 5 of the Law, is being delegated the activities by the controller regarding personal data processing in accordance with the Personal Data Protection Law. It is recommended that the controller, in the contract made with the processor, unambiguously defines the filing system protection, deadlines for storage, returning the filing system upon the expiry of the contract, because the controller is responsible for the processor who processes the data on his behalf and for himself. These contracts have been rare so far. Taking into consideration that the processor is keeping personal data filing systems owned by another person electronically in the IT system, e.g. at the accounting system of the controller, it is necessary that the contracted parties agree to perform certain activities for each other as well as their mutual obligations.

Having in mind that the personal data processing is not allowed if the data processed is unnecessary or inappropriate for the purpose of processing, it is necessary to regulate the prohibition that the controller must not process the data different from the purpose of the processing, regardless of whether it is carried out on the basis of data subject's consent or legal authorisation for processing with no consent.

Law indicated to established standards and procedures for ensuring security of personal data. Controllers have shown an obvious lack of understanding in this area, particularly when dealing with technical, staff and organisational safeguards. The controllers have the option to determine the appropriate level of safeguards, and the Agency should provide some information on the standards related to the nature of these data. For example, if we are looking for an example of an internationally established standard, technologically independent which refers to data processing in hard and electronic copy, it would be ISO/IEC 27001.2005.6 standard, etc. Similar situation exists in the process of determined safeguards for special categories of personal data because the controller is obliged to adopt a safeguard plan for the special categories of personal data. The most important is for the public sector to carry out its legal obligation of adopting secondary legislation i.e. internal Rule on personal data protection pursuant to Article 26, item 11 of the Law.

In this regard, the public sector will have a priority compared to the private sector. We believe that it is far more dangerous and unacceptable that public

authorities violate the principles of personal data processing compared to the private sector.

It should be taken into consideration that it is almost impossible to achieve full registration of all personal data filing system controllers. As the experience of some EU Member States has shown, even if the public awareness campaigns are organised, some private sectors can try and go “under the radar” and avoid registration so as not to be noticed. A continuous effort is required in discovering such controllers.

5.2. Register

The need to establish the Register of the Agency, besides the fact that it is the legal obligation of the controller and the Agency, in the part concerning the exercise of its supervisory role, indicates the necessity to urgently resolve this issue. The reasons for this are also the experiences of the agencies in the region we have established cooperation with in the previous period, and which, without exceptions, have established Registers of personal data filing systems. The objective of establishing the Register is to enable the data subjects to be aware of the processing of their personal data by the controllers. In addition, consolidating all the records into one Register makes for a more comprehensive supervision over personal data processing. Register is public and will be published on the internet on the website of the Agency (www.azlp.me). It will be kept electronically and entry of records by controllers will be done via Internet or by delivering the applications of filing system records on a prescribed form.

In the Budget request for 2012 sent to the Ministry of Finance, the Personal Data Protection Agency has illustrated the need to acquire the Register and asked the allocation of necessary funds. According to the information received from the competent Ministry, according to the Law on Budget for 2012 to be more precise, in the Item column of the Agency 4415 “Capital Expenditures – equipment” the amount of 80 000 is allocated to acquire the Register. These funds represent a financial framework within which we will have the procurement procedure, in accordance with the Law on Public Procurements.

Working group for the development of the Project Solution for the Register was established in October. The Working Group has developed and delivered a comprehensive project Solution in the given deadline defining the need of the Agency for appropriate software and hardware equipment enabling the Register to be obtained. Also, we would like to point out that, with the support of the Ministry for Information Society and Telecommunications, we will save significant amount of funds.

6. PUBLIC RELATIONS

6.1. Website

In accordance with the Work Plan for 2011, the Agency has undertaken all the necessary activities in order to develop the website. Owing to the financial support of the Institute of Human Rights Ludwig Boltzman from Vienna, the Agency was allocated funds for the internet presentation. In a specifically developed procedure, requested by the donors, the needs of the Agency were presented.

Web presentation of the Agency can be looked up at the website www.azlp.me



On the main menu there are information concerning the work of the Agency: Regulations, Opinions, Recommendations, Decisions, News, Reports and Work Plans, Projects, International cooperation and others. Each of the stated items from the main menu has its own submenu containing information such as: history,

organisation, competences, national and international legislation, secondary legislation, contact information, photo gallery, direct e-mail, public announcements, even announcements, etc.

In addition, the website contains the Form on the personal data filing system records which can be filled in and sent electronically, and also printed; Instruction for filing in the filing system records, Form of the Initiative and Request for the protection of rights.

Web presentation is certainly one of the most significant forms of promoting the Agency and introducing the national and international public with its work.

6.2. Facebook

Facebook is one of the largest and most famous social networks with over 800 million users. The head office of Facebook is in California. European head office of the company is registered in Dublin, therefore the rules of the European union and the laws regulating personal data protection of Ireland apply to it.

Facebook social network is very popular in Montenegro as well so information published via Facebook profile very soon reaches a large number of users. This is precisely the reason why the internet presentation of the Agency, in addition to the website, included this social network.

This form of promotion of personal data protection is envisaged through the Communication Strategy developed and presented by the short-term experts of the Twining Project.

Media announcement was used to inform the public that the information on the work of the Agency can be found on Facebook as well.



We believe that, in the era of information technology and achievement, providing for numerous advantages, attention regarding the personal data protection should be raised to a higher level. Namely, by pointing out useful information, we are informing the users of this social network of their rights and provide advice in order to influence that the number of possible personal data abuses via Internet is at its minimum. Facebook user, by publishing his personal data, is assuming the risk of its possible abuse. Each of the “friends” in this social network is given a certain scope of rights concerning access to personal data. Therefore, persons owning Facebook profiles should keep track of the scope and type of data published and also they should use privacy settings option. This is the only way to decrease the risk of personal data being abused.

An important mechanism available to every user is the possibility of submitting a complaint to the administrator for removing certain content violating their privacy. Facebook has established a Security Centre as well, a special website dedicated to various categories: children, parents, teachers, disabled persons, etc. containing instructions for protection. Each user can request their personal data owned by the company to be sent to them.

At the moment this Report was submitted, Rulebook on the Facebook profile of the Agency has not been adopted, but will be in shortest period possible.

6.3. Electronic and printed media

Activities dedicated to the promotion of the Agency have commenced from the very beginning of its functioning. Above all, we tried to have all the events organised by the Agency to be covered in the media.

We have informed the public in a timely manner of the activities undertaken, latest cases, opinions regarding the Law implementation as well as providing comments to the latest events from the personal data protection point of view and sent recommendations.

Media have been the best way the information can reach the public and citizens and controllers to get familiarized with their rights or obligations prescribed in the Personal Data Protection Law.

During 2011, the Agency has continued to develop previously established cooperation with the media.



Council Chairman and members and the Agency Director have given interviews and statements for all dailies, were guests in TV and radio stations and have regularly replied to the journalists questions received via e-mail or by phone conversations.

Articles and videos on the Agency have been broadcasted in the following media:

Independent daily "Vijesti"

- Personal identification documents only for inspection (16 January 2011)
- Inspectors working and the Law is violated (08 February 2011)
- Sefko verifying whether the police is abusing personal data (18 March 2011)
- Brajovic can get whatever he requests from Veljovic (08 March 2011)
- Operators prohibited from giving phone lists to the police (30 March 2011)
- They can check whatever they want only with the approval (02 April 2011)
- Espionage for free (02 April 2011)
- Police to erase information (29 April 2011)

- Forgot who he was writing to (01 June 2011)
- Worked according to the Law (06 July 2011)
- Urgent changes to the Law (13 August 2011)
- Video surveillance useful for the police, sometimes it does not help in catching perpetrators (13 August 2011)
- Personal identification documents only for inspection (13 August 2011)
- Notice board as a means to get employed (18 September 2011)
- Announcement at the notice board of the Employment Agency (19 September 2011)
- Right to privacy mostly violated by the state (25 October 2011)
- Someone bothered by the police control (26 October 2011)
- CPC amended again (08 November 2011)
- Return the documents (21 December 2012)

Daily "Dan"

- Police tapping unconstitutionally (20 January 2011)
- Officials must report (29 January 2011)
- Privacy of citizens is inviolable (08 February 2011)
- Police wiretapping the citizens (18 February 2011)
- Gave up the supervision of Police and NSA (30 March 2011)
- Directors reported to the misdemeanour court (18 April 2011)
- Property list without the names of officials (05 May 2011)
- Check what Monstat is recording (20 May 2011)
- Personal Data Protection Law (25 May 2011)
- DPS report accuracy to be checked by the Court (05 June 2011)
- Veljovic or the Agency are lying (11 June 2011)
- Citizens' trust wanted (20 May 2011)
- Police acquired phone call lists illegally (19 July 2011)
- Judges misinterpreting the laws (29 July 2011)
- There will be activities under the radar (03 August 2011)
- Telekom sued the Agency for phone call lists (16 September 2011)

- Wok for professionals and not for worthy ones (17 September 2011)
- Employment according to the law (21 September 2011)
- Katnic is not allowing them to work (20 October 2011)
- NSA also inspected (25 October 2011)

Daily "Pobjeda"

- EU standards protecting the privacy (08 February 2011)
- Supervision of three companies completed (01 March 2011)
- Dana and State Electoral Commission violated the law (20 May 2011)
- Dan and SEC don't care about the privacy (20 May 2011)
- Parties get lists only on paper (26 May 2011)
- Memorandum on Cooperation signed (17 April 2011)
- Gullible can hardly be protected even by the state (07 October 2011)
- Public sector neglected its obligations (25 October 2011)
- Progress achieved in personal data protection (11 November 2011)
- EU is not forgiving of employment through connections (28 November 2011)
- If we get the funds, we will employ professional staff (29 November 2011)
- Agency will meet the requirements for the continuation of the Twinning Project (01 December 2012)

Daily "Daily"

- Phone bills available to everyone (28 November 2011)
- Expert to control lists of the police (14 December 2011)

Portal Analitika

- If the lists are forged Agency cannot react (06 February 2011)
- Personal data abuse is dangerous (21 December 2011)

Antena „M“ – portal

- List Affairs an example of violation of the right to privacy (20 December 2011)

Radio „Free Europe“

- Cases of the right to privacy violation exist in Montenegro (07 February 2011)

Televizija „SUN“ - Bijelo Polje

- TV show „Interview“, guest Mr. Šefko Crnovršanin – Council Chairman

RTV „Pljevlja“ - Pljevlja

- Guest Mr. Šefko Crnovršanin- Council Chairman (05 February 2011)

Radio „Berane“ - Berane

- Guest Mr. Šefko Crnovršanin - Council Chairman (30 January 2011)

RTCG 1

- TV show „Lajmet“- feature on the Agency, Mr. Bojan Obrenović- director and Muhamed Gjokaj- inspector (09 April 2011)
- TV show „In the Centre“- Radenko Lacmanović- Council member

Radio VOA (Voice of America)

- Statement Mr. Aleksa Ivanović (May 2011)

Austrian Public Broadcasting service – Vienna

- Statement Mr. Aleksa Ivanović, Council member (March 2011)

Radio „Budva“ -Budva

- Guest Radenko Lacmanović, Council member (April 2011)

Agency „Mina“

- Reaction regarding the publication of personal data in the media during the reporting on the alleged sexual abuse of three girls from

the Home in Bijela, Council member Mr. Radenko Lacmanović “Draconian violation of Personal Data Protection Law” (04 April 2012)

- Statement, Council member Mr. Radenko Lacmanović “Complaint of the operator M:tel i Telekom to deliver data to the police rejected” (21 April 2011)

Televizija “Teuta” -Ulcinj

- Guest Mr. Šefko Crnovršanin- Council Chairman

Televizija “ APR”- Rožaje

- TV show „Positions“, guest Šefko Crnovršanin- Council Chairman

6.4. Leaflets and forms

Aiming at fully informing the public and the citizens of the Agency’s work, competences and obligations arising from the Law, activities were carried out in producing two flyers:

- Flyer containing basic information about the Agency and its competences
- Flyer on video surveillance

Flyers were distributed along with official letters which the Agency send to other authorities or personal data filing system controllers, in gatherings and meeting organised by the Agency, during inspection supervisions and in other ways.



Regarding the media presentation of the Agency, a set of meetings was held with the short-term expert of the Twinning Project from Germany. In addition, internal and external Communication Strategy was adjusted to the needs of the Agency.

In order to make the competences of the Agency more understandable to citizens and controllers, we have adopted the forms of the Request and Initiative for the protection of Rights. These forms are published on the website of the Agency.

6.5. Education

Education at the Agency and the implementation of the Personal Data Protection Law is carried out in several ways. Employees at the Agency had continuous telephone and direct communication with citizens and representatives of personal data filing system controllers. In addition, education is done through the participation of employees in the capacity of lecturers at the seminars organised by the Human Resources Management Administration of Montenegro. This activity was useful so that civil servants and state employees could get familiarized with the Law, obligations arising from it and competences and activities of the supervisory body i.e. the Agency. This type of training was organised for more than 100 persons and they were held in: Podgorica, Bijelo Polje, Tivat and Bar.

Regarding the 28 January, International Personal Data Protection Day, a Media Conference was organised where the members of the Council and the Director have introduced the public with the competences and the work of the Agency.

Press Conference regarding the implementation of the Twinning Project “Implementation of the Personal Data Protection Strategy” was organised on 7 February.

Minister of Interior, Mr. Ivan Brajovic, Head of Operations of the EUD Mr. Nikola Bertolini, Slovenian Ambassador H.E. Jernej Videtič, Austrian Consul Mr. Reinhard Kogler, Council Chairman of the Personal Data Protection Agency Mr. Šefko Crnovršanin and Information Commissioner of the Republic of Slovenia Mrs. Nataša Pirc had their speeches in the press conference. They have indicated the objectives and the importance of this Project. The event was covered in the media.

Workshop for the experts was held on the same day. National and international expert in the area of personal data protection have participated in the training.

In June 2011, three one-day seminars were organised for the employees in the public sector. Aiming at understanding personal data protection and getting introduced to the relevant legal framework, seminars were organised in Podgorica (7 June, 17 participants), Bijelo Polje (8 June, 18 participants) and Tivat (9 June, 22 participants). In addition, the Twinning project focused specifically on the needs regarding the information on personal data protection. Having in mind the census carried out in May 2011, organisation of a special training on statistics confidentiality with a special focus on the census data was considered useful and agreed with MONSTAT. The seminar was organised on 7 June in Podgorica, at the premises of the Human Resources Management Administration. Seminar was attended by 17 employees from MONSTAT. Participants in the above mentioned trainings have given feedback via a questionnaire which was drafted within the Project. They have shown that the average estimate of the training was positive.

One of the objectives of the Twinning project implemented in the Agency for Personal Data Protection is the analysis and possibility of enhancing data processing operations in the private sector. In this regard, in cooperation with the personal data protection experts from Austria, Slovenia and Germany engaged within the Twinning project, meetings with the representatives of insurance companies, telecommunications and energy were held in the premises of the Agency on 25, 26 and 27 October 2011. In addition to the representatives of the

Agency, the following persons attended the meetings: Resident Twinning Advisor – Lukas Gundermann, Assistant to the RTA – Milica Koska, Rosana Lemut-Strle – Deputy Information Commissioner of Slovenia and Gregor Konig – Office of the Personal Data Protection Commission of Austria. During the meetings, personal data protection experts from EU Member States were acquainted with standard data processing procedures in certain business areas. The experts will further assess those procedures with a view to compliance with the data protection legislation and would give recommendations as to the improvement were deemed necessary. Moreover, specific trainings will be held to acquaint the relevant staff of selected business sectors with the data protection legislation and best practice. Cooperation in this initiative is voluntary and has, above all, educational character. Mr. Lukas Gundermann pointed out that initiating cooperation and joint analysis of internal rules can result in their improvement. Mrs. Rosana Lemut-Strle introduced the participants with the obligations prescribed in the Personal Data Protection Law. She explained the legal basis for data processing, deadlines of storing data, procedure of data transfer abroad and etc. She also pointed out that it needs to be defined whether agents and representatives of insurance companies are processors or users of data.

The following representatives of insurance companies attended the meeting held on 25 October 2011:

- Lovćen osiguranje,
- Sava Montenegro,
- Atlas Life osiguranje i
- Delta Generali osiguranje.

During the meeting with the telecommunication sector held on 26 October 2011, the Twinning project expert, Mrs. Rosana Lemut-Strle presented the procedures that must be adhered to in the course of making data available to competent authorities for pre-trial and criminal procedures, the legal basis and in which regulations they can find it. Storing or retaining data and the deadlines were also discussed. In addition, the representatives of the telecommunication sector, during the meeting, had a lot of questions for the Agency and the project which largely shows that they are familiar with personal data protection as well as their interest to have an open and constructive dialogue with the Agency.

The following representatives from the telecommunications sector attended the meeting held on 26 October 2011:

- Crnogorski telekom AD
- Telenor
- Pošta CG
- BBM
- M:tel
- Total TV

The meeting with the representatives of energy sector i.e. Elektroprovreda A.D. Nikšić was held on 27 October 2011 as it is the only regulated monopolist in this sector in Montenegro. Five representatives of this company attended the meeting who introduced other participants with their work and plans.

Several topics were discussed such as: smart metering project, energy efficiency, delivery of bills to customers as well as public service quality market research.

Experiences from Austria and Germany were presented by the Twinning project experts Mr. Lukas Gundermann and Mr. Gregor Konig. These meetings are a good opportunity to discuss various topics and establish bases of future cooperation of the Agency and private sector in an interactive communication aimed at improving personal data protection.

In cooperation with the experts from the Twinning Project, Personal Data Protection Agency organised a seminar for the employees of the Police Directorate. Three-day seminar was held in the period from 15 to 17 November 2011 at the premises of the Police Directorate, in Podgorica. Experts from Austria – Mr. Paul Marouschek and Mr. André Peter carried out the trainings aimed at implementing the practice of personal data protection in police affairs. This type of training was organised for more than 20 employees working in appropriate positions who are responsible for making decisions on personal data within the performance of their duties.



6.6. Cooperation with the NGO sector

Cooperation with the NGO sector is very significant in the area of personal data protection. Personal Data Protection Agency organised a meeting with the representatives of Montenegrin non-governmental organisation on 24 October 2011. The topic of the meeting was to determine the manner of future cooperation between the Agency and NGO sector. The meeting was attended by the following NGOs:

Civil Alliance, CEDEM, Association of Youth with Disabilities of Montenegro, Centre for NGO Development, Juventas, Centre for Civic Education, SOS hotline for women and children who are violence victims, Centre for children's- rights of Montenegro, Safe Women's House, MANS and Action for Human rights. Personal Data Protection Agency was represented by: Mr. Sefko Crnovrsanin – Council Chairman, Mr. Aleksa Ivanovic and Mr. Radenko Lacmanovic – Council members and Bojan Obrenovic – Agency Director. In addition, the Resident Twinning Advisor of the Twinning Project “Implementation of Personal Data Protection Strategy” and BC Project Leader Mrs. Zora Cizmovic from the Ministry of Interior and Public Administration participated in the meeting. After the introductory speeches the representatives of NGOs has the opportunity to talk about different topics and pose questions to Agency representatives. In the meeting, there were good comments regarding the previous work of the Agency and support for future activities. The majority of attention focused on issues of use of video surveillance as evidence during the processing of criminal offences with the special attention placed on the basis for introducing video surveillance, abuse of personal data on the internet regarding IP addresses,

cases of the Agency regarding the lists of phone calls given to the Police Directorate by mobile operators and numerous other topics. The conclusion of the meeting was the expressed readiness and openness of the Agency, accordance with its competences, to undertake measures in processing cases i.e. carry out supervision according to information and initiatives it obtains from NGO representatives as well as the readiness of NGO representatives to direct the citizens coming to them towards the Agency.

6.7. Free access to information

In the reporting period, the Agency received seven requests for free access to information, as follows:

- **NGO “Institute Alternative”, 24 June 2011,**
- **NGO MANS, 28 July 2011,**
- NGO „Institute Alternative“, 14 September 2011
- T.P. , 28 September 2011,
- NGO „Institute Alternative“, 17 October 2011
- T.P. , 03 November 2011,
- NGO MANS, 22 November 2011

According to the above mentioned requests, the Agency delivered the requested information in the requested forms and lawfully prescribed deadline to the above mentioned organisations. There was only one case where partial access was granted.

Based on the experiences from the previous and current year we can state that the citizens are not exercising their right to submit requests which would enable them to have insight into the information the public authorities hold. This right is mainly exercised by NGOs and journalists.



7. INTERNATIONAL COOPERATION

Personal Data Protection Agency, pursuant to Article 50, item 9 of the Personal Data Protection Law, cooperates with authorities responsible for supervising the protection of personal data in other countries.

During 2011, Agency has established international cooperation with the following agencies:

- Commissioner for Information of Public Importance and Personal Data Protection of Serbia,
- Personal Data Protection Commissioner of Albania
- Directorate for Personal Data Protection of Macedonia
- Agency for Personal Data Protection of Bosnia and Herzegovina
- Agency for Personal Data Protection of Croatia,
- Information Commissioner of Slovenia,
- Agency for Personal Data Protection of Austria,
- Agency for Personal Data Protection of Germany,
- Agency for Personal Data Protection of the Republic of Kosovo .

As the result of readiness for establishing closer international relations between the bodies dealing with personal data protection, the Agency signed Memorandums and Declarations of future cooperation with: Directorate for Personal Data Protection of Macedonia, Personal Data Protection Commissioner of Albania, Agency for Personal Data Protection of Bosnia and Herzegovina, Agency for Personal Data Protection of Croatia

These Agreements specify that the representatives of the Agency will continuously exchange information regarding the promotion of personal data protection and to organise bilateral meetings at least once a year.

7.1. Visit to the Commissioner of Serbia - Belgrade

Representatives of the Agency for Personal Data Protection of Montenegro have visited the Commissioner for Information of Public Importance and Personal

Data Protection of Serbia on 25 February 2011 aimed at establishing regional cooperation and exchange of experiences in the personal data protection domain.. The Agency was represented by: Mr. Šefko Crnovršanin – Council President, Mr. Bojan Obrenović – director and Kristina Baćović-Head Inspector. The Commissioner's representatives who attended the meeting were: Rodoljub Šabić, Commissioner, Aleksandar Resanović, Deputy Commissioner, Radoje Gvozdenović, Head of the Department for supervision over data protection in governing authorities and Aca Stojev, Head of the Department for supervision over data protection in state and judicial authorities.

7.2. Article 29 Working Party, observer role – Brussels

Article 29 Working party is established pursuant to Article 29 of the Directive 95/46/EC and is an EU independent advisory body in matters of personal data protection and privacy.

During their meetings, expert opinions are being drafted for the European Commission regarding personal data protection. Unique principles of the Directives for all Member States are promoted, which is particularly important for accession countries because they have committed to meet the defined goals in the implementation of European standards regarding personal data protection.

Council member, Mr. Aleksa Ivanović attended the meetings of the Working group in Brussels several times during the year.

7.3. Visit to the Commissioner of Albania-Tirana

Representatives of the Agency for Personal Data Protection of Montenegro have visited the - Personal Data Protection Commissioner of Albania in Tirana, aimed at establishing regional cooperation and exchange of experiences in the personal data protection domain on 10 March 2011.

The topics discussed at the meeting were the possibility of establishing cooperation and exchange of experiences of the two institutions as well as the set of other issues concerning standard improvement in this area. Both sides have

agreed that this is a new area where Montenegro and Albania are not very experienced, and therefore any assistance and mutual cooperation can be of mutual benefit. At the end of a one-day visit to the Commissioner for Personal Data Protection of Albania, we can conclude that this type of promotion is very useful, if not necessary, and should be continued and improved to the mutual benefit and pleasure.

7.4. Visit to the Directorate for Personal Data Protection of Macedonia - Skopje

The delegation of the Agency for Personal Data visited Directorate for Personal Data Protection of Macedonia on 14 and 15 April 2011.

Topics of the meeting were various and a special focus was dedicated to video surveillance, direct marketing and Central Register and international cooperation. As a result of readiness to establish stronger relations between these two authorities, the directors Mr. Bojan Obrenović and Mr. Dimitar Gjeorgijevski signed the Memorandum on Future Cooperation on 15 April 2011.

7.5. Annual Spring Conference of Data Protection Authorities- Budapest

13th meeting of the Central Eastern European institutions dealing with personal data protection was held in the period from 27-29 April 2011. Personal Data Protection Agency was represented by Kristina Bacovic, Head of the Section for Supervision. The participation was in the role of an observer because attendance in the meetings of this body is gained through membership. All the participants, or representatives of all the countries participating in the meeting had the commitment to have a presentation, in which the concept of work of the institutions and authorities dealing with personal data protection was presented, from its structure, organisation, job descriptions, competences and obligations prescribed by law as well as statistic overviews of results achieved. The following countries had their presentations: Hungary, Poland, Czech Republic, Slovenia, Slovakia, Romania, Lithuania, Croatia, Estonia, Bulgaria, Macedonia, Serbia, Denmark, Bosnia and Herzegovina, Montenegro, Moldavia, Ukraine and Albania.

The meeting was extremely significant because our Agency was the youngest institution dealing with personal data protection in this part of Europe, so important information were received from a big number of countries, which have quite different legal and institutional decisions. The most obvious conclusion from the entire meeting was that there are institutions dealing with personal data protection which are still not independent in their work or which are within another authority, or a ministry and therefore are limited in their work and decision making, which means that one of the basic principles of the Directive 95/46/EC is not met.

During the meeting, our representative expressed interest of Personal Data Protection Agency of Montenegro becoming a member of this group and the final position, with the previous formal request of the Agency will be taken into consideration next year at the same time, at the following 14th meeting.

7.6. Visit of the Commissioner of Albania - Podgorica

Memorandum on Cooperation between the Personal Data Protection Agency of Montenegro and Personal Data Protection Commissioner of Albania was signed on 19 May 2011 in Podgorica. The Memorandum was signed by the Council Chairman Mr. Šefko Crnovršanin and Director Mr. Bojan Obrenović and the Commissioner for Personal Data Protection Mrs. Flora Čabej-Pogača. Signing of the Memorandum was organised at the premises of the Agency and it was covered by the media.

The abovementioned document defines future cooperation and bilateral relations of the two authorities aimed at improving personal data protection.

7.7. Eurodig 2011 Conference- Belgrade

Personal Data Protection Agency of Montenegro, represented by Mr. Šefko Crnovršanin – Council Chairman, Radenko Lacmanović – Council Member and Bojan Obrenović – Agency Director, attended the Eurodig 2011 Conference

held on Belgrade on 30 and 31 May 2011, organised under the auspices of the Serbian Ministry for Telecommunications and Information Society and the Council of Europe and in cooperation with international NGO Diplo Foundation and other national and European partners.

Topic of the Conference was “Influence of Internet on our lives”. The representatives of Agency participated in two workshops with the topics “Privacy and Data Protection” and “Freedom of expression and hate speech”.

7.8. Visit to the Commissioner of Slovenia- Ljubljana

In the period 03 July – 09 July 2011 the delegation of nine members of the Agency for Personal Data Protection and the Project Leader “Implementation of Personal Data Protection Strategy in Montenegro” – Zora Čizmović from the Ministry of Interior and Public Administration have visited the Information Commissioner of Slovenia. The Montenegrin Agency was presented by: Mr. Šefko Crnovršanin – Council President, Mr. Aleksa Ivanović and Mr. Radenko Lacmanović – Council members, Mr. Bojan Obrenović – director, Kristina Baćović – Head Inspector, Mr. Dragan Sekulić, Mr. Čedomir Mitrović and Mr. Muhamed Gjokaj – inspectors and Mirjana Perišić – advisor.

On 4 and 5 July 2011 in Ljubljana, we were introduced to the office of the Information Commissioner of Slovenia. On this occasion we were presented with the competences, organisation, procedures, supervisions procedures, raising awareness activities (website, annual reports, etc.) and numerous other topics. Special attention was dedicated to presenting the Central Register of personal data filing systems with an overview of the registration system. Employees at the Supervision Department, on the second day of the visit, together with the colleagues from Slovenia, had the opportunity to be present during the supervision at the Statistics Bureau and Revoz d.o.o enabling them to monitor the flow of supervision, drafting and delivering the records on inspection and all other elements which form the integral part of inspection procedure on-site. In addition, during the visit, at the Department for internal administrative affairs of the Ministry of Interior of Slovenia, the Central Population Register was presented to us.

7.9. Visit to the Data Protection Commissioner of Austria- Vienna

In the period 06 July – 09 July 2011 we were visiting the Data Protection Commissioner in Vienna, Austria. The Austrian colleagues have presented numerous topics such as: introduction to the Data Protection Act, (in particular to the tasks and organization of the Data Protection Commission), video surveillance, social networks, police data processing, e-government in Austria, the latest developments in the Working group Article 29, etc. The representatives of our Agency had the chance to ask questions regarding the activities in our country and with the consultations from Austria to come to a joint conclusion. This visit, implemented within the Twinning Project: “Implementation of Personal Data Protection in Montenegro” was a good opportunity for us to get familiar with the work of institutions involved in the same area as our Agency and have lengthy experience.

7.10. Meeting of the working group for personal data protection in the telecommunication sector - Berlin

Meeting of the working group in the telecommunication sector (International Working Group on Data Protection in Telecommunication) was held on the 12 and 13 September 2011 in Berlin in the premises of Bundesrata. The meetings are held twice a year and this was the 50th meeting. The Montenegrin Agency for Personal Data Protection was presented by Mr. Aleksa Ivanović, member of the Council.

In addition to the European states, the members of this working group are: USA, Canada, Korea, Japan and New Zealand. The topics discussed at the meeting were as follows:

- Privacy and electronic payments via Internet;
- Cloud computing;
- Smart metering (Smart Grids);
- Privacy through social networks;
- Abuse of telephone traffic in Great Britain;

- Privacy related to personal geospatial personal data (Geospatial Data and Privacy).

After the meeting, the Agency was asked to give its opinion regarding items 1, 2, 3 and 5.

The representatives of the Twinning Project were introduced to the documents and they were asked to translate them into the Montenegrin language so that the members of the Council can get familiar with it and give their opinions.

7.11. Visit to the German Personal Data Protection Agency-Berlin

Representatives of the Agency for Personal Data Protection, within the Twinning Project “Implementation of Personal Data Protection Strategy in Montenegro” had a study visit to Germany. The visit was organised in the period 19 September – 24 September 2011. The Montenegrin Agency was presented by: Mr. Šefko Crnovršanin – Council President, Mr. Aleksa Ivanović and Mr. Radenko Lacmanović – Council members, Mr. Bojan Obrenović – director and Zora Čizmović from the (MIPA) – Project Leader.

Within this visit, meetings were organised with the representatives of the Data Port Company dealing with the development of the processing software, safeguarding and keeping personal data or IT system related to personal data protection for the needs of public institutions of Germany. Also, the visit to the Federal Commissioner for Personal Data Protection was organised in Berlin as well as the visit to the State Office of Criminal Investigations in Dresden.

Special interest of the representatives of the Agency was dedicated to the area of video surveillance and access of the German Government when it comes to regulations in a state level. During the visit, we met the representative of the Board for International cooperation with South-Eastern European countries. There was a visit to Bundestag where the Saxony Commissioner is placed since he functions within the Parliament.

7.12. Visit of the Delegation of Kosovo – Podgorica

Representatives of the Personal Data Protection Agency of the Republic of Kosovo Mr. Ruzdi Jashari – the head state supervisor and Mr. Ramadan Qehaja – the state supervisor visited the Montenegrin Personal Data Protection Agency on 22 November 2011. The guests were welcomed by the Council Chairman – Mr. Šefko Crnovršanin, Agency director – Bojan Obrenovic, inspector – Muhamed Djokaj and advisor – Ms. Mirjana Perisic. The aim of the visit was the exchange of experiences in the personal data protection field and international cooperation. Having in mind that the Agency of Kosovo was established this year, the supervisor expressed special interest in our work and satisfaction that the acts and rulebooks of our Agency served as a good example and facilitated the initial steps in their establishment. In addition, they have informed us that relevant European addresses suggested them to establish cooperation with the Montenegrin Agency due to its significant results achieved in a short timeframe.

During this bilateral meeting, readiness for future cooperation was expressed which was formalised by signing the Memorandum on Cooperation. Memorandum and the Declaration were signed on 19 January 2012.

7.13. Annual Plenary meeting on Modernisation of Convention 108 – Organised by TPD (Council of Europe) - Strasbourg

Council member of the Agency, Mr. Radenko Lacmanovic participated in the Annual Plenary meeting on Modernisation of Convention 108 held in Strasbourg in the period from 29 November until 02 December 2011. The gathering was organised by TPD, a body of the Council of Europe dealing with personal data protection. Here, the Agency became a member of this significant international body as the only authorized representative of Montenegro in the area of personal data protection.

During the meeting, draft amendment to the Convention 108 was reviewed. In addition, the analysis of the answers members states delivered to the questionnaire was presented: processing of personal data in criminal-legal area. Public authorities of Montenegro, who received the Questionnaire, did not deliver

answers to all of the questions in the envisaged deadline. Some of the answers delivered were estimated as unclear or incomplete. It was concluded that the deadline for the delivery of answers to the mentioned Questionnaire is prolonged until February 28, 2012.

During bilateral meetings, the member of the Council Mr. Radenko Lacmanovic has agreed specific forms of cooperation, above all with the representatives of the regional countries. It was jointly concluded that the Agencies from the regional countries could prepare projects which they could uniquely apply with at the EU and other international funds, aimed at more efficient personal data protection.

7.14. Conference on Strategic Approach and Developments of Personal Data Protection Mechanisms, Skopje

Delegation consisting of four members of the Personal Data Protection Agency of Montenegro as follows: Mr. Šefko Crnovršanin – Council Chairman, Mr. Radenko Lacmanović – Council member, Mr. Cedomir Mitrovic and Mr. Muhamed Gjokaj – inspectors, attended the Conference on Strategic Approach and Developments of Personal Data Protection Mechanisms from 24 to 27 November 2011. The Conference in Skopje was organised by the Directorate for Personal Data Protection of Macedonia. Approximately 15 countries from the region and Europe attended this event. All representatives had their presentations which mostly consisted of presenting the results of the personal data protection authorities in their countries. The presentation of the Personal Data Protection Agency of Montenegro was prepared by the Council member, Mr. Radenko Lacmanovic, under the title: Legal Framework for Personal Data Protection in Montenegro. At the end, the conclusion was that there is a quality legal framework for personal data protection in Montenegro, and that it is our task to work on raising awareness of citizens, authorities, institutions and commercial companies.

A very useful segment of this visit was the direct communication based on establishing significant contacts and getting familiar with the results of the countries from the region and Europe. Montenegrin delegation was particularly noticed during the section of the presentation concerning its previous work and results achieved.

7.15. Workshop “Personal data processing in the law enforcement sector”, Tirana

Representatives of the Agency attended the Workshop “Personal data processing in the law enforcement sector” on 13 December 2011 held in Tirana, Albania. Workshop was organised within the activity of the Personal Data Protection Commissioner of Albania, aimed at strengthening the influence of the Office regarding the harmonisation of laws with the standards of the European Union.

At the workshop, Personal Data Protection Agency was represented by Council member, Mr. Aleksa Ivanovic and inspector, Mr. Muhamed Gjokaj.

The head lecturer at the workshop was Mr. Emilio Aced Felez, deputy director of the local authority for personal data protection of Madrid, as the former head of the joint supervisory authority “Europol”, who held lectures in the following topics: Application of personal data protection principles in the law enforcement sector, Personal data processing in EU within the cooperation of judicial and police sector as the joint supervisory authority and Draft Rulebook on deadlines for keeping personal data in the archives of the police of Albania. In addition, one of the lecturers in the workshop was Ms. Anolja Salja, who held lectures on the topic of “Legal requirements for personal data processing in law enforcement of Albania”.

After the presentations, the third part of the workshop consisted of discussions of all participants, where the Council member, Mr. Aleksa Ivanovic participated and introduced the participants with the results of the Personal Data Protection Agency of Montenegro as well as its undisputed contribution in the implementation of the Personal Data Protection Law regarding the establishment of new relations between the police and mobile operators, in the part concerning the delivery of data only with previous court order delivered by the police.

7.16. Meeting with the representatives of Eurojust, Podgorica

Eurojust is a European Union body established in 2001 aimed at enhancing work of competent bodies within the Member States in the area of cross border and organised crime.

Meeting with the representatives of Eurojust Mrs. Diana Alonso Bla, Data Protection Officer and Ms. Malci Gabrijelcic, national representative of Slovenia was held at the Personal Data Protection Agency on 20 December 2011.

Meeting was attended by the Council chairman and members and the Agency director. Representatives of Eurojust have shown interest in the previous work of the Agency, legal solutions, organisations and number of employees as well as statistical data for measuring the progress of this body.

7.17. Visit to the Agency of Bosnia and Herzegovina, Sarajevo

Representatives of the Personal Data Protection Agency, Council Chairman Mr. Sefko Crnovrsanin, Council Member Mr. Radenko Lacmanovic and Agency director Mr. Bojan Obrenovic visited the Personal Data Protection Agency in Sarajevo on 16 December 2011. Montenegrin delegation was welcomed by the Agency director Mr. Petar Kovacevic and his employees.

After the meeting in which experiences on previous work and plans were exchanged, Memorandum on future cooperation was signed.

7.18. Visit to the Agency of Coratia, Zagreb

Council Chairman Mr. Sefko Crnovrsanin, Council member Mr. Radenko Lacmanovic and director Mr. Bojan Obrenovic visited the Personal Data Protection Agency of Croatia on 23 November 2011. Montenegrin delegation was welcomed by the Agency director Mr. Franjo Lacko.

As the result of readiness for establishing closer relations and aiming at continuous exchange of information for the promotion of personal data protection, the representatives of the Montenegrin and Croatian Agencies signed the Declaration and Memorandum on Cooperation.

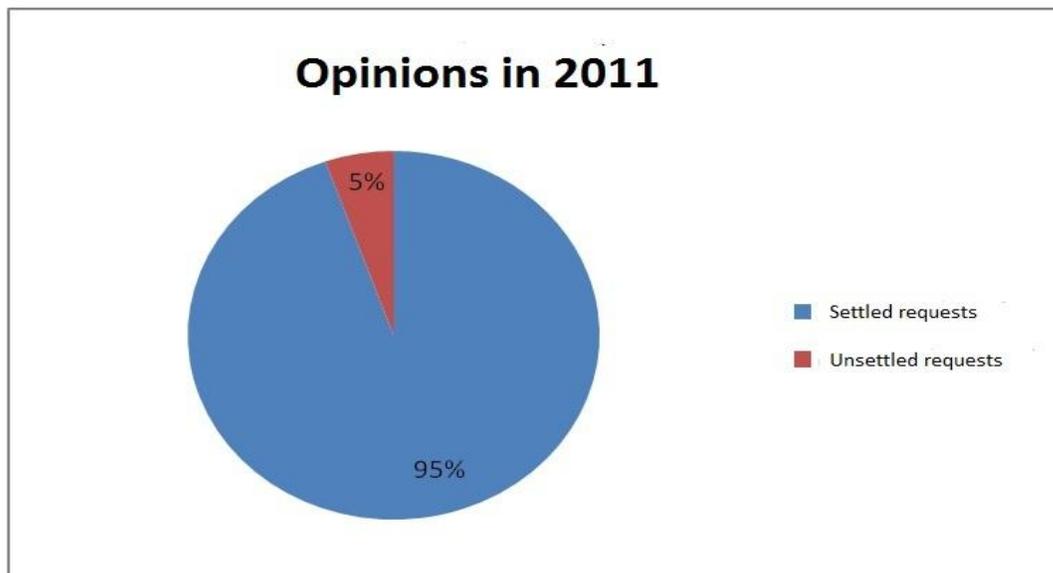
7.19. Organising a Regional Conference in Montenegro

Agency's intention was, according to the Work Plan, to host a regional gathering of personal data protection authorities in October 2011. Initial activities were undertaken, but we received an invitation from the Macedonian colleagues who have organised a Regional Conference in the same month. Therefore, the Agency postponed hosting this gathering for 2012.

8. OPINIONS REGARDING LAW IMPLEMENTATION

In 2011, Agency received 37 requests for opinions regarding the implementation i.e. interpretation of the provisions of the Personal Data Protection Law. From the total number of requests, 35 opinions were given, while 2 have been transferred to 2012 because they were submitted at the end of the year.

Graphical Illustration No. 3



8.1. Deciding upon the request for opinion from the MOI of Montenegro, Department for Administrative Internal Affairs, as of 5 January 2011, No. UPI/211/10-0-1/2, requesting the Personal Data Protection Agency for an opinion regarding the Personal Data Protection Law which relates to the request of the Company "Novito" doo for verification of data in order to determine whether person NN, UPRN xxxxxx, employed at DOO "Novito" has the citizenship of Montenegro, the Agency Council adopted the

OPINION

that by delivering the requested data to DOO "Novito", the MOI of Montenegro would violate the Personal Data Protection Law.

8.2. Deciding upon the request for opinion of NN, received on 25 January 2011 via e-mail, stating that he received a request for declaring his national origin from the Head of section he works at via phone and fax, the Agency Council adopted the

OPINION

that according to the Personal Data Protection Law there is no obligation to deliver the requested data on national origin.

8.3. Deciding upon the request for opinion of the Police Directorate from 23 February 2011, No. 011/11-7518 to the Personal Data Protection Agency regarding the implementation of the and the right of the Division for Internal Police Control of MOI to Personal Data Protection Law access the electronic personnel records of the Police Directorate, the Agency Council adopted the

OPINION

that enabling access to electronic personnel records of the Police Directorate is not contrary to the Personal Data Protection Law.

8.4. Deciding upon the request for opinion of the Directorate for Confidential Information Protection No. 121/11 from 24. February 2011, related to the delivery of copied records on submitted requests for issuing permissions for access to confidential information and security clearances, issued and revoked permissions and security clearances referred to Article 72 of the Law on Information Confidentiality to NGO "INSTITUTE ALTERNATIVE", the Agency Council adopted the

OPINION

that the delivery of requested data, in a limited scope, is in accordance of the Personal Data Protection Law.

8.5. Deciding upon the request for opinion of the Fond for work No. 01/1-291/1-11 from 28 February 2011, related to the delivery of data to the Trade Union of Montenegro on the persons applying to the Fond for Labour for the payment of their severance pay, referring to personal data (name and surname, UPRN, company) as the data on persons who have exercised their right at the Fond for Labour already, the Council Agency adopted the

OPINION

that the delivery of requested data is not contrary to the Personal Data Protection Law.

8.6. Deciding upon the request for opinion of the PHI General hospital Niksic No. 1277 from 17 March 2011, concerning the delivery of lists of employees at the PHI General Hospital Niksic, with the registry numbers and addresses to the Secretariat for Commerce and Finance of the Niksic municipality, for compulsive collection, the Council Agency adopted the

OPINION

that the delivery of requested data is in accordance with the Personal Data Protection Law.

8.7. Personal Data Protection Agency received a memo from M:tel telecommunication company No. 01/11 from 25 March 2011 requesting an opinion on the implementation of the Personal Data Protection Law regarding the enforcement of the Decision of the Bureau for Metrology No. 05-124/1 from 27 January 2011.

Acting in accordance with Article 50, item 3 of the Personal Data Protection Law (Official Gazette of Montenegro 79/08 and 70/09) Agency “gives opinions regarding the implementation of this Law” and on the basis of the above mentioned it is obvious that the Bureau of Metrology is the lawful user of data in the regular procedure, for the purposes of performing its obligations prescribed in the Law on Metrology (Official Gazette of Montenegro 79/08-18) and the Rulebook on metrological requirements for the basic clocks within telephone exchanges used for the calculation based on the call data records (Official Gazette of Montenegro 06/10)

OPINION

Based on the above mentioned, the Agency has determined that the delivery of CDR to the Bureau for Metrology is not contrary to the provisions of the Personal Data Protection Law. Considering the fact that this is a regular legal procedure, a separate request from the Bureau for Metrology is not required.

8.8. Deciding upon the request for opinion of M:tel telecommunication company Podgorica from 25 May 2011, No. 10408 containing the request to the Personal Data Protection Agency for an opinion on the implementation of the Personal Data Protection Law regarding the delivery of CDR to the Bureau of Metrology, containing data on telecommunications between the numbers and their duration Agency Council adopted the

OPINION

that the delivery of CDR with all the data is not contrary to the provisions of the Personal Data Protection Law.

8.9. Deciding upon the request for opinion of the Ministry of Interior No. 01/12 from 26 May 2011, related to the Request for access to information sent to the Ministry of Interior in which the NGO MANS is requesting the delivery of data from the records on a NN person, the Agency Council adopted the

OPINION

that the Agency cannot make a decision in this matter.

On the basis of documentation provided to the Personal Data Protection Agency it was determined that there is a incompatibility between the first name in the Request for access to information that MANS delivered to MOI and the first name in the Request for access to information that MOI sent to the Agency.

8.10. Deciding upon the request for opinion of the Ministry of Health NO. 03/353 from 01 June 2011, regarding the publishing of patients' data, consisting of a part of UPRN (last six digits) on the waiting list for medical procedures, Agency Council adopted the

OPINION

that the publishing of personal data consisting of the part of UPRN (last six digits) is contrary to the Personal Data Protection Law

8.11. Deciding upon the request for opinion of Telenor D.O.O., No. 01/2681 from 07 June 2011, of whether the Agreement of providing services defining transfer of financial data of the company, concluded between Telenor DOO, as a part of the Telenor Group from Norway and Telenor Key Partner of Norway, in accordance with positive regulations in Montenegro, or more specifically whether the approval of the Personal Data Protection Agency is required for the above mentioned transfer, Agency Council adopted the

OPINION

that the Agreement on the provision of services concluded between Telenor DOO, and Telenor Key Partner of Norway is in accordance with the Personal Data Protection Law and no special approval of the Agency is required for transfer of personal data from Montenegro.

8.12. Deciding upon the request for opinion of M:tel telecommunication company Podgorica from 09 June 2011, requesting the Personal Data Protection Agency for an opinion on the implementation of the Personal Data Protection Law regarding the delivery of required data to Montenegro Post and banks, for the issuance of the copies of bills to the users of their services, Agency Council has determined the following:

OPINION

that the delivery of the above mentioned volume of data, in this specific case, is in accordance with the provisions of the Personal Data Protection Law.

8.13. Deciding upon the request for opinion of M:tel DOO telecommunication company Podgorica, Montenegrin Telekom ad Podgorica and Telenor ad Podgorica, from 09 June 2011 asking the Personal Data Protection Agency for an opinion on the implementation of the Personal Data Protection Law regarding the delivery of UPRN to the operator of the Universal phonebook MCA doo, as well as the possibility of publishing these numbers in the Universal Phonebook, the Agency Council has determined the following:

OPINION

that the delivery of the stated volume of data is not contrary to the provisions of the Personal Data Protection Law, while the publishing of the Universal Phonebook with UPRN is contrary to the provisions of this Law.

8.14. Deciding upon the request for opinion of the Montenegrin Telekom ad Podgorica from 24 June 2011 asking the Personal Data Protection Agency for an opinion on the implementation of the Personal Data Protection Law (Official Gazette of Montenegro 79/08 and 70/09) regarding the delivery of data of the Montenegrin Telekom ad Podgorica (name, surname, UPRN, address, activation date) to the Police Directorate, according to written requests No. 052/11-9424/2 and 052/11-94245/2 from 23 June 2011 aimed at identifying the owners of phone numbers delivered in the request, Agency Council adopted the

OPINION

that the delivery of requested data is not contrary to the provisions of the Personal Data Protection Law.

8.15. Deciding upon the request for opinion of the Ministry for Information Society and Telecommunications from 05 July 2011 No. 051-01-2346/1-11 asking the Personal Data Protection Agency for an opinion on the Law implementation

regarding the volume of data processing for the identification of persons for setting up free e-mail accounts, the Agency Council adopted the

OPINION

that the data processing for identification of persons, stated in the Request for issuing e-mail accounts on the domain mail.me, is not contrary to the provisions of the Personal Data Protection Law.

8.16. Deciding upon the request for opinion of the General Hospital of Montenegro from 11 July 2011, No. 05/01-9563 asking the Personal Data Protection Agency for an opinion on the implementation of the Personal Data Protection Law, Article 36, regarding the necessity of acquiring an affirmative opinion prior to making a decision on the establishment of the personal data filing system for video surveillance, Agency Council adopted the

OPINION

that it is necessary to obtain an opinion of the union prior to making a decision on introducing video surveillance, and in addition, pursuant to the Personal Data Protection Law, the opinion does not have to be affirmative.

8.17. Deciding upon the request for opinion of the person NN from 27 July 2011, No. 01/27, asking the Personal Data Protection Agency for an opinion on the implementation of the Personal Data Protection Law regarding the delivery of the IP address of the operator to the Basic state prosecution for the data subject who is not a part of the initiated court proceeding, the Agency Council adopted the

OPINION

that the delivery of IP address as a personal data of the provider to the basic state prosecutor, for the person who is not a part of an initiated court proceeding, is not in accordance with the provisions of the Personal Data Protection Law.

8.18. Deciding upon the request for opinion of Porsche leasing from 30 August 2011, received via e-mail, regarding the matter of giving a professional opinion on whether it is possible to deliver the data given by the clients (UPRN, name, last name) to Porsche leasing Austria, as a parent company, in accordance with positive regulations in Montenegro, or whether it is in accordance with the Law to inform the client on the possibility of transferring data from Montenegro during the signing of the contract by adding a clause in the contract under the General conditions, the Agency Council adopted the

OPINION

that the existence of a Contract on delivery of personal data between Porshe leasing d.o.o. Montenegro and Porshe leasing Austria must exist pursuant to the Personal Data Protection Law and that the approval of the Agency for transfer of data from Montenegro is not required; that it is in accordance with the Law to inform the client on the possibility of transferring data from Montenegro during the signing of the contract by adding a clause in the contract under the General conditions.

8.19. Deciding upon the request for approval of Telenor doo No. 03/781 as of 06 September 2011, regarding the signing of Agreement on cooperation between Telenor Montenegro and Telenor Srbija, delivered as a draft which specifies the work in establishing a joint centre for services of phone product and services provision, centre for providing information and support to users, as well as the services of collecting due liabilities from post-paid service subscribers i.e. the opinion whether the approval of the Agency is required for signing the Agreement, Agency Council adopted the

OPINION

that the draft Agreement on cooperation is in accordance to the Personal Data Protection Law and the approval of the Agency for transfer of personal data from Montenegro is not required.

8.20. Deciding upon the request for opinion submitted by the Secretariat of local administration of the municipality Plužine from 27 September 2011, No. 04-1915 regarding the implementation of the Personal Data Protection Law (Official Gazette of Montenegro 79/08 and 70/09) in relation to the delivery of information, as an answer to a parliamentary question, on the users of municipal budget funds, amount of these funds and their purpose, Agency Council adopted the

OPINION

that the delivery of data on budget users, its amount and purpose, on the above mentioned basis, in the necessary limited scope, is not contrary to the provisions of the Personal Data Protection Law.

8.21. Deciding upon the request for opinion of MFC MONTENEGRO D.O.O Podgorica from 18 October 2011 on the implementation of the Personal Data Protection Law (Official Gazette of Montenegro 79/08 and 70/09) regarding the obligation of obtaining approval of the legal processor for the activities of delivery and maintenance of electronic document filing system and establishment

of electronic data base of client of Telekom Montenegro, Agency Council adopted the

OPINION

that the legal processor is not required to obtain the approval of the Personal Data Protection Agency for performing the affairs from its scope of work.

8.22. Acting according to the request of the Secretariat for general administration and social activities No. 01/37 from 25 October 2011 for an opinion of the Agency, whether the delivery of data on persons who entered employment in Municipality of Bar to public companies and institution financed from the municipality budget (name and surname, education, date of entering into employment and date of cessation of employment for the period 2005 to 2011) by the member of the Parliament Ms. Snezana Jonica, is contrary to the provisions of the Personal Data Protection Law (Official Gazette of Montenegro 79/08 and 70/09), Agency Council adopted the

OPINION

that the delivery of the above mentioned personal data is not contrary to the provisions of the Personal Data Protection Law.

8.23. Deciding upon the request for opinion of PC Airports of Montenegro from 28 October 2011, received via e-mail asking the Personal Data Protection Agency for an opinion on the implementation of Personal Data Protection Law (Official Gazette of Montenegro 79/08 and 70/09) regarding the request on free access to information of the NGO MANS which, among other, requested the copies of documents containing information on names of current employees at the airports of Montenegro, the Agency Council adopted the

OPINION

that the delivery of names of current employees at airports of Montenegro upon the above mentioned basis is not contrary to the provisions of the Personal Data Protection Law.

8.24. Deciding upon the request for opinion of the Ministry of Interior No. 051/11-19637/1 from 28 October 2011, requesting the Personal Data Protection Agency for opinion regarding the harmonisation of Articles 10 and 12 of the draft Agreement on Cooperation in the area of fight against crime between Montenegro and the Czech Republic with the Personal Data Protection Law, Agency Council adopted the

OPINION

that Articles 10 and 12 of the Draft Agreement on cooperation between Montenegro and Czech Republic are not contrary to the Personal Data Protection Law.

8.25. Deciding upon the request for opinion No. 10-00-43309 from 02 November 2011 in which ELEKTROPRIVREDA CRNE GORE A.D. NIKŠIĆ is asking the Personal Data Protection Agency on the opinion regarding implementation of the Personal Data Protection Law regarding the delivery of names and surnames of subscribers of EPCG to a processor i.e. the agency that would be hired to carry out a research concerning the service satisfaction level of EPCG subscribers, the Agency Council adopted the

OPINION

that the delivery of above mentioned data to an agency for further processing is not contrary to the Personal Data Protection Law.

8.26. Deciding upon the request for opinion of the Municipal Police Podgorica No. 01-032-4721/4 from 09 November 2011, asking the Personal Data Protection Agency for an opinion regarding the implementation of the Personal Data Protection Law (Official Gazette of Montenegro 79/08 and 70/09) regarding the matter of publishing, in printed media, the names and surnames of persons who have committed an offence and were penalized for it, the Agency Council adopted the

OPINION

that publishing the names and surnames of persons in printed media, upon the above mentioned basis is contrary to the provisions of the Personal Data Protection Law.

8.27. Deciding upon the request for opinion of the First Financial Bank AD Podgorica, No. 6767/11 from 11 November 2011, from the Personal Data Protection Agency on the implementation of the Personal Data Protection Law (Official Gazette of Montenegro 79/08 and 70/09) regarding the establishment of the filing system Audio surveillance for issuing payment orders and sale of securities by the clients, Agency Council adopted the

OPINION

that the establishment of audio surveillance, upon the abovementioned basis, is not contrary to the provisions of the Personal Data Protection Law.

8.28. Deciding upon the request for opinion of the Ministry of Labour and Social Welfare No. 42/11 from 16 November 2011, containing a request for the Personal Data Protection Agency for opinion on the amendments to the Law on Child and Social Welfare, stating that Article 8 will be used to implement the Personal Data Protection Law, Agency Council adopted the

OPINION

that Article 8 of the Law on Child and Social Welfare should have the subtitle “Right to personal data protection” while the Article itself should contain the appropriate implementation of regulations on personal data protection.

8.29. Deciding upon the request for opinion of the Head administrator of the municipality Kolasin from 20 November 2011 No. 07-3094 asking the Personal Data Protection Agency for an opinion on the implementation of the Personal Data Protection Law (Official Gazette of Montenegro 79/08 and 70/09) regarding the complaint of MANS to the decision of the Secretariat for economy and finance of the municipality Kolasin approving access to information on net earnings of local officials increased by their years of service, as an answer to the request of MANS, which states that the payroll list of local officials should also be delivered, Agency Council adopted the following:

OPINION

that the delivery of payroll list of local officials is contrary to the provisions of the Personal Data Protection Law.

8.30. Deciding upon the request for opinion of PHI Bureau for Emergency Medical Assistance of Montenegro from 28 November 2011, delivered to the Agency on 29 November 2011 No. 01/43 regarding the implementation of the Personal Data Protection Law (Official Gazette of Montenegro 79/08 and 70/09), regarding the letter of MANS sent to the Bureau No 4814 on 23 November 2011 requesting the delivery of lists of employees and the date all the employees started working at the units of the Bureau for Emergency Medical Assistance in Podgorica and Danilovgrad, Agency Council adopted the

OPINION

that the delivery of lists of employees and the date all the employees started working at the units of the Bureau for Emergency Medical Assistance in Podgorica and Danilovgrad is not contrary to the provisions of the Personal Data Protection Law.

8.31. Deciding upon the request for opinion of the Fund for Minorities Podgorica No. 979/11 from 1 December 2012 asking the Personal Data Protection Agency for an opinion on the implementation of the Personal Data Protection Law (Official Gazette of Montenegro 79/08 and 70/09) regarding the publishing of projects implemented in 2011 on their website, Agency Council adopted the

OPINION

that publishing of applied and implemented projects, containing personal data, is contrary to the Personal Data Protection Law

8.32. Acting according to the request of the Service of the Head Administrator of the municipality Tivat No. 00201-166 of 02 December 2012 asking the opinion of the Agency, whether the delivery of data on persons entering into employment for an indefinite or definite period of time in municipality of Tivat, in the form of a list with the following information; first and last name, professional qualifications, date of entering into employment and date of its cessation) as a reply to the question of the member of the Parliament of Ms. Snezana Jonica , is contrary to the provisions of the Personal Data Protection Law (Official Gazette of Montenegro 79/08 and 70/09), Agency Council adopted the following:

OPINION

that the delivery of the mentioned personal data is not contrary to the provisions of the Personal Data Protection Law.

8.33. Deciding upon the request for opinion of ELEKTROPRIVREDA CRNE GORE AD NIKSIC from 13 December 2012 to the Personal Data Protection Agency on the implementation of the Personal Data Protection Law (Official Gazette of Montenegro 79/08 and 70/09) regarding the selection of processors of the services of printing and putting in envelopes the electricity bills (possible choice of processors from Macedonia and Serbia) as well as the delivery of personal data (name, surname, address, subscriber's number and postal code) during this process, the Agency Council adopted the

OPINION

that the delivery of the above mentioned personal data, pursuant to the stated basis, to the legal processors for carrying out activities from its scope of work, is in accordance with the Personal Data Protection Law.

8.34. Deciding upon the request for opinion of the Ministry of Interior No. 206/11 -14025/2 and 21620/2 from 19 December 2012 on the implementation of the Personal Data Protection Law (Official Gazette of Montenegro 79/08 and 70/09) upon the request of the Embassy of the Republic Macedonia in Podgorica sent to MOI for acquiring data on the address of an NN person from Podgorica, aimed at acquiring information from the person in writing of the issues concerning the procedure for extramarital appointing of the daughter to her mother, which this person has with NN, situated in Skopje, for regulating the status of the daughter with the competent Municipal Centre for Social Affairs in Skopje, the Agency Council adopted the

OPINION

that the delivery of personal data of the above mentioned data subject, for the purposes of their transfer to Republic of Macedonia, is in accordance with the Personal Data Protection Law, only if there is consent of the data subject.

8.35. Deciding according to the request for opinion of the cabinet of the Mayor of municipality of Plav from 20 December 2012, No. 031-1045 asking the Data Protection Agency for an opinion on the implementation of the Personal Data Protection Law (Official Gazette of Montenegro 79/08 and 70/09) regarding the delivery of information as an answer to parliamentary question in the users of budget funds i.e. citizens of municipality of Plav who have been paid certain fees on the basis of damages to their property during the floods at the end of 2010 and beginning of this year, the Agency Council adopted the

OPINION

that the delivery of data on the budget fund users, amount and purpose, upon this basis, is not contrary to the provisions of the Personal Data Protection Law.

9. APPROVALS FOR TRANSFER OF PERSONAL DATA

Personal data undergoing processing may be transferred from Montenegro to another country or given to an international organisation, which implements safeguards provided for by this law, with the prior consent of the supervisory authority.

Approval of the Agency is not obligatory in the following cases:

- 1) the transfer of personal data is provided for by a separate law or an international treaty binding on Montenegro;
- 2) the data subject has given his prior consent to the proposed transfer and has been informed of possible consequences of data transfer;
- 3) the transfer is required for the performance of a contract between a legal or natural person and the personal filing system data controller or the implementation of pre-contractual obligations;
- 4) the transfer is required in order to protect the life of the data subject or is in his interest;
- 5) the transfer is made from a register or records which according to laws or other regulations are available to the public;
- 6) the data are transferred to the Member States of the European Union and European Economic Area or countries which are included on the European Union list of countries with an adequate level of personal data protection;
- 7) the transfer is necessary on important public interest grounds, or for the establishment, exercise or defence of legal claims of the data subject;
- 8) the personal data filing system controller concludes a contract stipulating adequate contractual obligations accepted by the Member States of the European Union, with a personal data processor from the third country, and where
- 9) the transfer is necessary for the conclusion or performance of a contract between the personal data filing system controller and a legal or natural person concluded in the interest of the data subject.

9.1. AVON COSMETICS MONTENEGRO D.O.O.

Deciding upon the request for approval of AVON Company form 01 July 2011 for the transfer of personal data from Montenegro, the data referring to representatives and associates (persons who, on the basis of the Work Contract, are

hired by this company to perform activities of presenting and promoting products on the spot as well as the buyers of products), Avon Cosmetics is obliged to deliver a copy of the signed contract to the Agency or its draft, concluded between the company and contracted processor, company Sales Forces, as well as the Safe Harbour certificate the stated company has. The former is required by the Agency in order to decide on giving approval for the transfer of personal data from Montenegro.

Personal data filing system controller, Avon Cosmetics did not contact the Agency after this information so scheduled supervision was carried out in September which determined irregularities that have been ordered to be corrected. Follow-up supervision determined the elimination of these irregularities, among others, by introducing the consent clause for data subjects and the transfer of their data from the country.

9.2. TELENOR D.O.O.

Telenor doo submitted a request for approval and request for opinion on the same matter whether the approval of the Agency is required for transfer of data from Montenegro to Serbia within the provisions of the Contract delivered to the Agency for analysis. Agency was of the opinion that Telenor doo does not require the approval of the Agency for data transfer defined in the contract with Telenor Serbia.

10. PROPOSALS AND RECOMMENDATIONS FOR IMPROVEMENT OF PERSONAL DATA PROTECTION

In several situations, Agency reacted to issues it became aware of via media or through inspection supervisions by giving recommendations or proposals aimed at eliminating certain cases which violated the right to personal data protection.

10.1. Universal Service 1180

Representatives of the Personal Data Protection Agency held a meeting with the representatives of the Agency for Electronic Communications and Postal Affairs on 21 December 2011. The topic of the meeting was the introduction of the Universal Directory of telecommunication services through which, by calling the number 1180, one can obtain information on the phone numbers of mobile and landline telephone subscribers. After the meeting, joint press information was released.

It was concluded that all the legal and technical requirements were met for the subscribers of electronic communication services to prevent entry of their personal data and phone number into the public phonebook. The Law on Electronic Communications stipulates that the operators are obliged to arrange, publish and regularly update public directory of all subscribers except those who requested in writing (special request or contract) not to be listed in the directory. Legal entities are not entitled to request not to list such information in public directory, which is used for their identification and communication therewith, except of the authorities in charge of the defense and security affairs. Operators of public electronic communication networks have provided a special request, which enables a subscriber to request that his personal data and phone number are not entered into the directory and are not available through the information service of phone numbers.

The Agencies informed that the Universal telecommunication service, via number 1180, provides all users information on publicly available subscribers of all networks in Montenegro.

10.2. Bureau of Statistics

In the course of inspection supervision of faculties, regarding the manner of processing and protection of personal data, it was determined that in the Applications for student entry, introduced by the Decision of the Parliament FRY AC No. 322 (Official Gazette of FRY 31/96), under item 10, there is a clause on nationality.

Insisting on stating one's nationality, in this specific case, is contrary to Article 2, paragraph 1 of the Personal Data Protection Law, which stipulates that "personal data may be processed only to the extent necessary to achieve the purpose of processing and in a way compatible with the aims for which they were collected". In addition, the category of nationality belongs to special categories of personal data, the processing of which can be carried out only with the previous consent of the data subject and in the manner prescribed in the Rulebook on the manner of designating and safeguarding special categories of personal data (Official Gazette of Montenegro 11 as of 18 February 2011).

In order to avoid the possibility of processing personal data in the manner contrary to the Law, and therefore their possible abuse, we suggest that the new Application for student entry is drafted, as well as all forms where personal data are entered and to harmonise them with the Personal Data Protection Law and the Constitution of Montenegro (Article 43) and as such, to make them available for use.

10.3. Media recommendation

Montenegrin media, who have been reporting on the sexual abuse of three underage girls, have violated the Constitution, laws and international conventions regarding the rights of children i.e. the right to respect private life and personal data protection.

The Constitution of Montenegro, as the highest legal document of a country, protects the rights of children. Article 74 stipulates the following: "A child shall

enjoy rights and freedoms appropriate to his age and maturity. A child shall be guaranteed special protection from psychological, physical, economic and any other exploitation or abuse. “

In addition, the Constitution, in Articles 40 and 43 is as follows: “Everybody shall have the right to respect for his/her private and family life.” respectively “the protection of personal data shall be guaranteed. It is prohibited to use personal data for purposes other than those for which they were collected. Everyone shall have the right to be informed about the personal data collected about him or her and the right to court protection in case of abuse.”

Aimed at protection of privacy, personal data and protection of children from consequences media reporting can cause if ethics is not adhered to, internal conventions and directives also contain matters of protecting the personality of a child.

UN Convention on the Rights of the Child, Article 16, paragraph 1 and 2 stipulates that “no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation. The child has the right to the protection of the law against such interference or attacks.”

In addition, Article 17, item e, in this regard also stipulates that “States Parties encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.”

Montenegro, in order to meet the standards and recommendations for a faster integration of society in EU, is heading towards adopting and implementing laws concerning privacy protection and personal data protection and their harmonisation with the *acquis communautaire* and positive practice of the European Union.

In this regard, Personal Data Protection Law was adopted establishing the Personal Data Protection Agency as an independent public authority which supervises implementation of personal data protection.

Personal Data Protection Agency as a new body has encountered a set of problems from the beginning of its activities which are a result of the society not being informed on the significance of protecting the right to privacy and personal data.

The Agency believes that the media have the core significance for affirmation, education and raising awareness of the public to a higher level, which is our joint mission.

Experience shows that democratic and cultural consensus of all subjects is necessary in order to successfully meet the standards, which is the aspiration of every society. In this regard, the Agency sees media as the greatest ally and partner and not the subject which will violate the right to privacy by publishing data which can be used in order to identify a person and endanger privacy of a child, which in this specific case, was done to these three minor girls.

Personal Data Protection Law in Article 9 stipulates that “personal data mean any information relating to an identified or identifiable natural person”.

“Protection of personal data shall be provided to every individual, regardless of nationality, domicile, race, skin colour, sex, language, religion, political or other belief, ethnicity, social origin, property, education, social position or other personal attributes.” (Article 4).

“The processing of data relating to individuals may be carried out for a lawful purpose or with the prior consent of the data subject.” (Article 2, paragraph 1).

In addition to serious violation of PDP Law in the matter concerning the publishing of these data, other laws have been violated as well as follows:

Law on Electronic Media (which in Article 47, paragraph 3 states: “it is prohibited to publish or broadcast information that reveal identity of a minor under the age of 18 involved in cases of any kind of violence, regardless of whether a witness, victim or perpetrator, or to reveal the details from family relationships and personal life of a child.”)

Law on Media (which in Article 22, paragraph 3 stipulates that media are forbidden to publicise the identity of a minor involved in a criminal act, either in the capacity of a victim or a defendant)

Data published in individual electronic and printed media have been published as initials of the girls, stating their age, information on where they come from as well as that they stayed in the Children's Home in Bijela, and the photographs from which their father can be recognized, are sufficient data on the basis of which their identity can be determined.

Publication of the stated information on a child, in addition to the violation of the above mentioned acts, is considered irresponsible of certain media and journalists, who are obliged to protect the identity of a child, which in this specific case cannot be in the public interest or the child whose data are published.

In its previous announcements in this matter, the Agency has warned the media that publishing such information is a violation of the Personal Data Protection Law.

On this occasion, we would like to invite all media and recommend that in the future, reporting on sensitive issues, the interest to keep in mind should primarily be the interest of the child, because publishing personal data on the basis of which a person is identified or identifiable can endanger their privacy.

In the case of non-compliance, the Agency will be forced to implement legal decisions and undertake appropriate measures.

10.4. Recommendation for the Agency for Electronic Communications and Postal Services

In accordance with Article 50 of the Personal Data Protection Law, the competence of the Personal Data Protection Agency is among others, to decide on requests for protection of rights regarding the violation of the provisions of the Law. Regarding this matter, we have received several requests from natural persons concerning the manner of concluding Subscriber's Contract with the mobile operators whose representatives, in addition to recording basic data on the identity of the natural person (name and surname, UPRN and address) which is the

integral part of the contract, also requested service users and signatories to the Contract, the copy of their ID.

In the course of inspection supervision of mobile operators, regarding the above mentioned problems, we have received an explanation that the copy of the ID for them is “additional security feature” for possible identification of a person, in cases when, due to any reason, there is a court dispute between the operator and user, as the signatories to the Subscriber’s Contract. Legal basis for this can be found in the provision of the General terms and conditions of providing services (Article 4, paragraph 3), approved by the Agency for Electronic Communications and Postal Services, which, among others, enables the operator to permanently retain copies of the documents used to identify a person.

During the meeting with the representatives of the Agency, held on 27 April 2011, it was agreed that the most important and full proof subject to expert analysis used in order to identify a user is his signature, and that the copy of the ID document is unnecessary duplication of data already contained in the Subscriber’s Contract. On the other hand, each copying of ID document, necessary or unnecessary, creates possibilities of various abuses, which was not so rare in the previous period.

In order to contain the abuses to the minimum possible level, we suggest Article 4, paragraph 3 of the General terms and conditions of providing services to be rephrased and to disable the operators to copy ID documents and to oblige them, in concluding future Subscriber’s Contract, to act in accordance with the new situation and therefore give an important contribution in protecting the personal data of the citizens of Montenegro.

Regarding the above mentioned, the PDPA is prepared to carry out any further type of cooperation and communication.

10.5. Recommendation for legal entities, entrepreneurs, and accommodation service providers

Pursuant to Article 50, paragraph 1, item 7 of the Personal Data Protection Law (Official Gazette of Montenegro 79/08 and 70/09), Personal Data Protection

Agency issued a Recommendation to legal entities, entrepreneurs, and accommodation providers according to the initiative of NGO “Youth Initiative for Human Rights“ (YIHR), No. 880/03 from 26 September 2011, regarding the keeping of ID documents of guests during their stay in hotels.

The Constitution of Montenegro clearly defines personal data protection, Article 43, as follows: “It is prohibited to use personal data for purposes other than those for which they were collected. Everyone shall have the right to be informed about the personal data collected about him or her and the right to court protection in case of abuse.”

In the course of recording the accommodation users, in ensuring the unique standards for providing hospitality services, the accommodation provider is obliged to “on daily bases, keep an accurate, full and up-to-date guest book in the accommodation hospitality facility and “submit to the state administration body in charge of interior affairs and public administration, the notification on number of guests, in accordance with a special regulation governing sojourn.” (Article 103, paragraph, item 3 of the Tourism Law, Official Gazette of Montenegro 61/10 and 40/11).

In accordance with the above mentioned, Law on Registers of Temporary and Permanent Residence, in Article 21 (Official Gazette of Montenegro 41/10 and 41/11) clearly determines the obligation of disclosing data of persons using the accommodation service. The legislator has enumerated personal data to be entered in the Register of Residence, and the service provider is obliged to verify the accuracy of data by insight with the public document and supply accurate data to the Police in the registration and cancellation of temporary residence procedure.

Therefore, Personal Data Protection Agency, pursuant to Article 50 of the Law, carried out several inspection supervisions. It was ordered that the records of accommodation users, by keeping and copying ID documents is stopped, due to the violation of provision of the Personal Data Protection Law (Article 2, paragraph 2) which clearly states the following: “personal data may be processed only to the extent necessary to achieve the purpose of processing and in a way compatible with the aims for which they were collected.”

Personal Data Protection Agency made the recommendation to stop the previous practice because keeping and copying ID documents is a direct violation of the provisions of the Personal Data Protection Law. In the case of non-compliance, the Agency will be forced to implement legal decisions and undertake appropriate measures.



11. APPROVALS REGARDING THE ESTABLISHING OF PERSONAL DATA FILING SYSTEMS

In the reporting year, the Agency reviewed 13 requests for approvals, 5 of which were given in writing, two were given by the lack of action and four requests have not obtained formal approval due to incomplete requests but the inspection supervision corrected irregularities on already set up video surveillance and can be considered as given approvals, while two requests were not taken into account due to the lack of additional documentation requested by the Agency, pursuant to the Law.

11.1. University of Montenegro, Faculty of Electrical Engineering, Podgorica

On 1 April 2011, Faculty of Electrical Engineering addressed the Personal Data Protection Agency for obtaining approval for establishing a personal data filing system Video Surveillance pursuant to Article 27 of the Personal Data Protection Law. In addition, on the basis of the same Article, data referred to in Article 26 were delivered and the Decision on the introduction of video surveillance pursuant to Article 35 of the same Law.

However, for obtaining approval for establishing a filing system, in addition to delivering the required documents, the filing system needs to be fully harmonised with the Personal Data Protection Law. Namely, under item 4 of the Records of data on personal data filing system, in the explanation on the purpose of data processing, a law is mentioned without specifying which one. Assuming that this refers to Article 36, paragraph 1 of the Personal Data Protection Law based on which the Decision on the introduction of video surveillance defines that video surveillance will be set up in amphitheatres 019 and 106. Taking into account that this space is intended for usual working activities of professors and students attending the classes, video surveillance would cause violation of privacy and the right to personal data protection of the above mentioned persons guaranteed in Articles 2 and 4 of the Law. In this specific case, as in similar situation, the principle of applying the Law by the Personal Data Protection Agency is focusing on the second part of Article 36, paragraph 1 "...provided that this cannot be

achieved in another way”. We accept the position that video surveillance would be the easiest way to achieve the purpose of protecting persons and property in the above mentioned premises, but considering that this is also not the only way and that it is contrary to the mentioned articles of the Personal Data Protection Law, prior to obtaining the requested approval all of the irregularities pointed out must be eliminated. Faculty of Electrical Engineering did not contact us further.

11.2. HI Institute for Public Health Podgorica

On the basis of the received request for approval from 21 June 2011 for the establishment of video surveillance filing system, it was determined that the Institute for Public Health did not meet its legal obligation referred to in Article 27 of the Law stating that in addition to the request, information referred to in Article 26 must be delivered. Only when these legal requirements are met, the approval can be considered.

Institute for Public Health did not contact the Agency further, so the inspectors within their unscheduled supervisions, after being informed of the intention of introducing video surveillance, carried out inspection supervision at the Institute. After the elimination of stated irregularities was ordered, the personal data filing system controller harmonised the surveillance filing system with the Personal Data Protection Law.

11.3. MNA Gaming d.o.o.

On the basis of the request for establishing personal data filing system of regular guests by the personal data filing system controller, MNA Gaming, Agency replied officially asking the personal data filing system controller to submit the request formally, which means that, pursuant to Article 27 of the Law it needs to deliver data referred to in Article 26, along with other important information, in order for the Agency to make a decision. MNA Gaming did not send their request, so during unscheduled supervisions, inspection was carried out with this personal data filing system controller. It was determined that this filing system was not established, and the irregularities noticed were recorded to be corrected.

11.4. Altimi d.o.o. – wedding dress store

On the basis of the request for approval for establishing the video surveillance filing system at the retail outlet Studio Altimi – store for wedding dresses, the Agency replied officially asking the personal data filing system controller to submit the request formally, which means that, pursuant to Article 27 of the Law, it needs to deliver data referred to in Article 26, along with other important information, in order for the Agency to make a decision. The filing system controller did not send his request, so during unscheduled supervisions, inspection was carried out with this personal data filing system controller. It was determined that this filing system was established, and the records on inspections stated certain irregularities which have been eliminated by the next follow-up inspection.

11.5. Altimi d.o.o. – tanning studio

On the basis of the request for approval for establishing the video surveillance filing system at the retail outlet Studio Altimi – tanning studio, the Agency replied officially asking the personal data filing system controller to submit the request formally, which means that, pursuant to Article 27 of the Law, it needs to deliver data referred to in Article 26, along with other important information, in order for the Agency to make a decision. The filing system controller did not send his request, so during unscheduled supervisions, inspection was carried out with this personal data filing system controller. It was determined that this filing system was established, and the records on inspections stated certain irregularities which have been eliminated by the next follow-up inspection.

11.6. Eminent d.o.o.

On the basis of the request for approval for establishing the video surveillance filing system at the retail outlet Studio Altimi – store for wedding dresses, the Agency replied officially asking the personal data filing system

controller to submit the request formally, which means that, pursuant to Article 27 of the Law he needs to deliver data referred to in Article 26, along with other important information, in order for the Agency to make a decision. The filing system controller did not send his request, so during unscheduled supervisions, inspection was carried out with this personal data filing system controller. It was determined that this filing system was not established, and the irregularities noticed were recorded to be corrected.

11.7. Clinical Centre of Montenegro

In addition to the request for opinion on the implementation of the Personal Data Protection Law, a request for approval for the establishment of video surveillance filing system within the Clinical Centre of Montenegro was received. The request was formally submitted within the meaning of the provisions of the Law. Taking into account the fact that it involves a large number of cameras, inspectors carried out inspection supervisions and determined certain irregularities which were eliminated immediately, so it can be considered that the approval was given tacitly, because there is a record of the state on the spot.

11.8. Broadband Montenegro-BBM

Deciding upon request for approval for the establishment of video surveillance filing system at the branch office of the Company, the Agency has determined that all the requirements were met and gave approval for establishing this filing system.

11.9. Normal Company d.o.o.

Deciding upon request for approval for the establishment of video surveillance filing system at the business building NCO, the Agency has determined that all the requirements were met and gave approval for establishing this filing system.

11.10. Municipality of Pljevlja, Municipal Police

Tacitly given approval for the introduction of video surveillance on locations envisaged by the Decision No. 13-365-597 on the territory of Pljevlja municipality.

11.11. Municipality of Berane, Municipal Police

Approval for the introduction of video surveillance on locations envisaged by the Decision No. 09-364-572 on the territory of Berane municipality.

11.12. Municipality of Niksic, Municipal Police

Approval for the introduction of video surveillance on locations envisaged by the Decision No. 13 on the territory of Niksic municipality.

Regarding the project “Together for Nature” – Foundation for the development of Northern of Montenegro – FORS Montenegro which it implements together with Municipal Police and local administrations from the municipalities of Niksic, Berane and Pljevlja, and financed by the EU, FORS Office addressed the Personal Data Protection Agency with individual requests of Municipal Police of these municipalities for approval for establishing video surveillance filing system on public areas which in individual Decisions of the above mentioned municipalities have been stated to be the most endangered locations for the establishment of so-called “unauthorised landfills”. Meeting with the representatives of FORS and Municipal police was held, during which the problem was explained in detail. The inspectors of the Agency have inspected these locations or their state as stated in the Decisions, in Niksic and Berane, and gave their approval. Request for approval of the Municipal Police of Pljevlja was not given in writing, because inspectors did not visit the locations, but it was given tacitly pursuant to Article 27, paragraph 3 which states that if the Agency fails to issue a reply within 30 days, it shall be considered that the consent has been given.

11.13. Municipality of Budva, Secretariat for local self-government

Secretariat for local self-government of the Municipality of Budva has addressed the Agency with the request for approval for establishing a filing system Records of attendance at work in the Municipality of Budva. The request was submitted in accordance with the Personal Data Protection Law. It was received on 30 December 2012 and the approval was given in January 2012.

12. INSPECTION SUPERVISION

Inspection supervision is carried out with all the categories of personal data filing system controllers obliged to adhere to the provisions of the Personal Data Protection Law such as: state authority, public administration body, local self-government and local administration authority, commercial enterprise and other legal person, entrepreneur and natural person with a seat in Montenegro.

There are two types of inspection supervision:

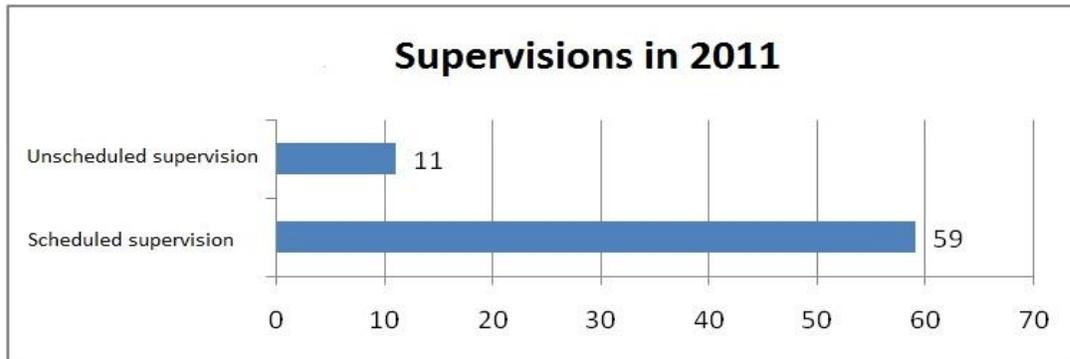
- scheduled and
- unscheduled inspection supervision.

Scheduled supervision is done on the basis of planned inspection supervision of personal data filing system controllers on the basis of obligations from the annual plan of supervisions, of all categories of controllers as follows:

- state sector;
- public sector;
- units and bodies of local administration;
- commercial entities and other legal persons;
- entrepreneurs;
- natural persons.

Unscheduled supervisions can be carried out:

- upon the request for protection of rights;
- upon the initiative for protection of rights;
- upon order.

Graphical illustration No.5

Unscheduled supervision can encompass all categories of personal data filing system controllers:

- state bodies and state administration bodies;
- units and bodies of local administration;
- commercial entities and other legal entities;
- entrepreneurs.

Supervision subject:

Scheduled inspection supervision of personal data filing system controllers are, as rule, controls the following:

- personal data filing systems with the names of the systems;
- legal basis for personal data processing;
- name of the filing system controller;
- purpose of personal data processing;
- categories of persons, personal data contained in the filing system;
- method of collecting and keeping personal data;
- deadline for storage and using personal data;
- name of the personal data filing system user;
- transfer of personal data from Montenegro;

- internal processing rules and personal data safeguards of personal data filing system controllers;
- special types of personal data processing;
- biometrics;
- video surveillance and
- entry and exit from the premises or offices.

The total number of scheduled supervision in all sectors during 2011 was 59, and the number of unscheduled supervisions was 25.

In addition to the above mentioned, at the beginning of last year there were 15 follow-up supervisions from the previous year.

State sector:

In the state sector, 15 supervisions were carried out in the reporting year, which makes 25% of the total number of supervisions, one of which is a follow-up supervision for verifying the elimination of irregularities. Other supervisions stated elimination of irregularities with official notes.

Public sector:

In the public sector, eight regular supervisions were carried out, which makes 14% of the total number of supervisions, two of which were follow-up. For other supervisions, elimination of irregularities was recorded in official notes.

Local administration units:

Pursuant to the Annual Work Plan, 12 scheduled supervisions were carried out at the local administration units, which makes 21 % of the total number of supervisions, six of which were follow-up, while for other supervisions elimination of irregularities were recorded in official notes.

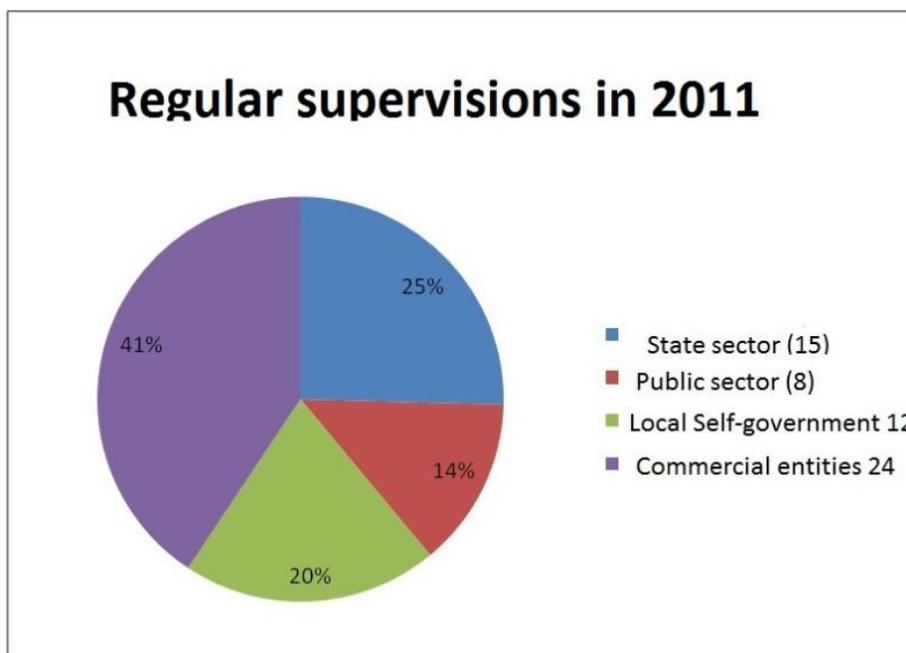
Commercial entities:

Regarding the commercial entities, 24 scheduled supervisions were carried out, which makes 40% of the total number of supervisions, 16 of which were follow-up. For other supervisions, elimination of irregularities was recorded in official notes.

12.1. Scheduled inspection supervision

Inspectors verify the implementation of laws and secondary legislation regulating the area of personal data protection through scheduled inspection supervision. Inspectors, during supervisions, are having insight into the personal data filing systems which have been established and also verify whether the filing systems already sent to the Agency have correctly illustrated the state of personal data protection of filing system controllers.

Graphical Illustration No. 5



In the course of 2011, scheduled supervisions in most cases determined the irregularity concerning the filing system controller failing to deliver personal data filing systems to the Agency, pursuant to Article 27 of the Law. Further, irregularities could be summarised as neglecting or inappropriate implementation of processing measures and personal data protecting in the course of data processing. From the above mentioned it can be concluded that the regulation in the area of personal data protection are mostly violated due to the act that entities are not familiar enough with them.

In addition, concerning the determined irregularities in scheduled supervisions, it can be stated that the scope of personal data processing has increased.

Video surveillance, as one of the personal data filing systems, has its special position almost always in determining irregularities, but it will be further commented in the part concerning unscheduled supervisions.

A specific case of determined violation of the Personal Data Protection Law was stated with the commercial entity which adopted the Decision on the protection of property and established a video surveillance filing system, by setting up cameras in all offices, even several cameras, which are used by the employees to carry out their daily duties, which, in addition to recording the image, also have audio recordings which violated all the fundamental human rights, to privacy and personal integrity. The supervision was concluded with a statement that the commercial entity eliminated all the irregularities. Request for initiation of misdemeanour procedure was lodged against the legal person and responsible person in the company but it was suspended due to the reason that the request for instituting the procedure was not submitted in a timely manner.

Inspection supervision covers all controllers in the territory of Montenegro, which means that inspections are carried out in central as well as in southern and northern Montenegro. The largest percentage of supervision covered the central part of Podgorica as the administrative centre where 60 to 70% of administrative, economic, commercial and other activities are carried out.

- Certain number of supervisions covered public authorities and public administration bodies as follows:

Ministry of Sustainable Development and Tourism, Ministry of Science, Ministry of Labour and Social Welfare, Ministry for Human and Minority Rights, Hydrometeorological Service of Montenegro, Phytosanitary Administration, Tobacco Agency, Veterinary Administration, Bureau for the Care of Refugees, Administration for Anti-corruption Initiative, Administration for Youth and Sports, Administration for Games of Chance, Seismological Bureau, Directorate for Development of Small and Medium-sized Enterprises, State Election Commission, Police Directorate of Montenegro, Clinical Centre of Montenegro- Podgorica, Institute for Public Health, Statistical Office of Montenegro – Monstat, Podgorica, Higher Court – Podgorica.

- Concerning the units of local administration, supervision was carried out with the following controllers:

Secretariat for General Administration and Civic Affairs – Municipality Bijelo Polje, Secretariat for Civic Affairs and General Administrative Affairs – Municipality of Niksic, Secretariat for General Administration – Municipality Kotor, Secretariat for General Administration and Civic Affairs – Municipality Berane, Secretariat for Finance, Development and Traffic – Municipality Berane, Secretariat for General Administration and Civic Affairs – Municipality Kolasin, Secretariat for Commerce and Finance - Municipality Kolasin, Secretariat for General Administration and Civic Affairs – Municipality Plav, Secretariat for Spatial Planning and Property – Municipality Plav, Municipal Police of the Capital City, Secretariat for Finance, Development and Traffic – Municipality Plav, Service for Joint Affairs – Municipality Bijelo Polje.

- Control of commercial entities cover the following enterprises in various economic areas (production, tourism, trade, services, etc) :

„Mesopromet” d.o.o. Bijelo Polje, „Studio Moderna Crne Gore“ d.o.o. Podgorica, „MNA Gaming” d.o.o Podgorica, „Ljetopis“ d.o.o Podgorica, „Doding“ d.o.o. Podgorica, „Altimi” d.o.o Podgorica, „Moderato” d.o.o. Podgorica, „Agrocentar” d.o.o. Podgorica, „Info” d.o.o. Podgorica, „Telenor” a.d. Podgorica, „Kroling“ d.o.o. Podgorica, ugostiteljski objekat „Caffe caffe“ Podgorica, „Crnogorski Telekom“ a.d. Podgorica, „M-tel” d.o.o. Podgorica,

„Hotel Planinka“ Žabljak, „Avon Cosmetics Montenegro” d.o.o. Podgorica, „Bar kod” d.o.o. Podgorica, „Voli Trade” d.o.o. Podgorica.

- Supervision covers a certain number of financial institutions:

„Podgorička banka Societe Generale Group“ a.d. Podgorica, „Erste Banka“ Podgorica, „Invest Banka Montenegro” Podgorica, „Prva banka Crne Gore osnovana 1901”. a.d. Podgorica, „Komercijalna banka Budva” a.d. Budva, „Atlas banka” a.d. Podgorica, „Hypo Alpe Bank” a.d. Podgorica, „NLB Montenegro banka” a.d. Podgorica.

- Supervision was carried out with a certain number educational institutions as follows:

➤ University of Montenegro:

Faculty of Philosophy, Niksic, Faculty of Economy and Management, Podgorica, Faculty of Law, Podgorica, faculty program for teachers in Albanian language, Podgorica, Faculty of Mathematics and Natural Sciences, Podgorica.

➤ Secondary Education Institutions:

PI Gymnasium „25 maj”, Tuzi; PI Vocational High School „Sergije Stanić”, Podgorica; PI High School of Electrotechnics „Vaso Aligrudić”, Podgorica; PI Gymnasium “Slobodan Škerović”, Podgorica; PI High School of Medicine „Podgorica”, Podgorica.

➤ Elementary education institutions and specialised schools:

PI Elementary School „Savo Pejanović”, Podgorica; PI Home for Youth „Mladost”, Bijela; PI Insitution for education and professional education of disabled children and youth, Podgorica.

12.2. Unscheduled inspection supervision

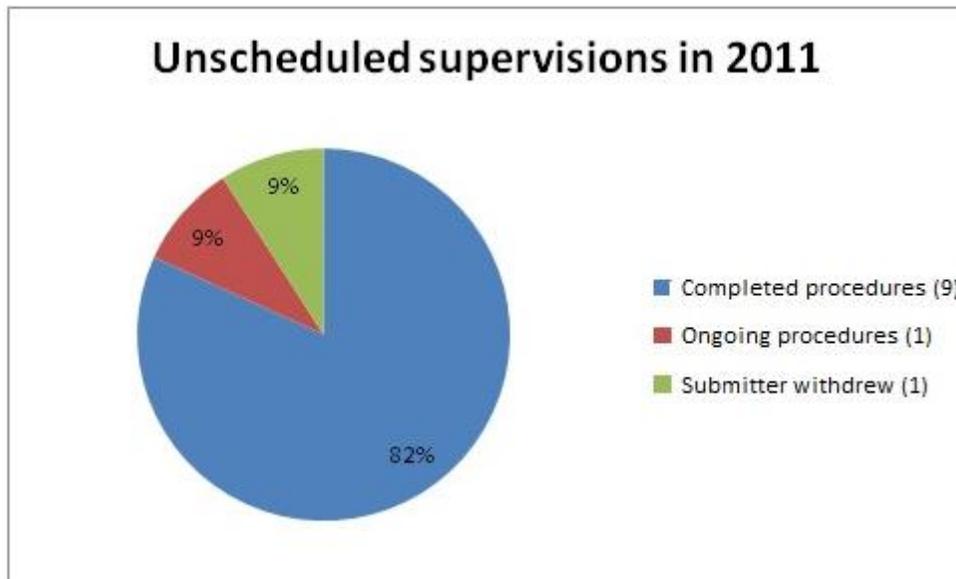
Provisions of the Personal Data Protection Law define the procedure of privacy protection which is used to prevent the violations of privacy through unlawful personal data processing in an expedient, short and efficient manner. The Agency as a supervisory body is obliged to make a record on the determined factual state of the personal data filing system controller upon the received request for the protection of rights within eight days. In the prescribed deadline, the Agency, through its records on inspection, orders the elimination of irregularities by the personal data filing system controller. The controller may object if he believes that he has not violated the Law.

In 2011, there were 11 initiatives and requests for the protection of rights. On the basis of the above mentioned, there were nine supervisions carried out, one procedure which is not completed yet, while in one case, the applicant has given up the procedure.

In addition, on 9 February 2011, a decision was adopted upon the complaint to the records made upon the request for the protection of rights of the submitter S.Ž. No. 516/10, from December 2010. Request concerned the allocation of the unique citizens' number of his underage son to another person non-resident. The allocation was done by the diplomatic-consular representation.

The decision accepted the complaint of S.Ž. and pursuant to Article 71, item 1 of the Personal Data Protection Law, Ministry of Interior was ordered to eliminate the determined irregularity caused by issuing the UPRN to another person with a Decision, within 15 days from the day the Decision of the Agency is received.

Graphical illustration No. 6.



1. Acting upon the Request for the protection of rights No. 01/08 from 08 April 2011 submitted by M.Z. which indicated irregularities in the activities of the Crnogorske komercijalne banke AD Podgorica.

Supervision determined the following factual state:

Based on the initiative for the protection of rights No. 01/08 from 08 April 2011 submitted by M.Z., pursuant to Article 68 of the Personal Data Protection Law, inspection supervision of the Crnogorske komercijalne banke AD Podgorica was carried out on 12 April 2011 aimed at determining the allegation for the request for the protection of rights of M.Z. In the request for the protection of rights, it is stated that one of the CKB employees has issued the Analytical card to a third person, without the consent of the owner. The mentioned form was later, by the prosecutor in the Basic Court, during the second hearing, presented to the court by reading. During the supervision, by having insight into the Analytical card of M.Z. for the period of 4 months, it was determined that there were no traces that one of the CKB employees printed out the form, due to the reason that, as stated by the CKB employee, the option for printing is erased from the log file of CKB IT system. Due to this, it is physically impossible that one of the CKB employees could have issued or have issued the mentioned Analytical card. Taking into consideration that this is a case the resolution of which requires managing specific

facts and proof (in this case the Analytical card was presented in a hearing, i.e. the trace in the hearing record that it was recorded), and which has been subsequently requested by the submitter of this request and which could be used to determine that there was an unauthorised personal data processing involved, due to the lack of the card, inspection supervision is suspended.

2. Acting upon the Initiative for the protection of rights No. 01/20 from 15 June 2011 submitted by the lawyer N.M. indicating irregularities in activities of the Crnogorski Telekom a.d. Podgorica.

Supervision determined the following factual state:

Based on the initiative for the protection of rights No. 01/20 from 15 June 2011 submitted by the lawyer N.M., pursuant to Article 68 of the Personal Data Protection Law, inspection supervision of Crnogorski Telekom a.d. Podgorica was carried out on 16 June 2011. On the basis of the allegations from the request for the protection of rights of the submitter, it was obvious that the T-com shop employee, when concluding contract on the sale of a mobile phone, in the course of entering required personal data has copied the ID document (ID card), explaining that it is an implementation of T-com internal rules, when concluding contracts with their service users. During the inspection supervision, T-com representatives did not deny the allegations from the request, explaining that this is not a procedure which has a legal basis, but an established practice as an additional security when concluding a user contract. Act, General conditions for establishing subscriber's relations and allocation of a subscriber's number of the Crnogorski Telekom a.d. Podgorica, approved by the Agency for Electronic Communications, as a competent body, in Article 7, paragraph 1 prescribes the possibility of insight into the ID document, for the purposes of verifying accuracy of the stated personal data when concluding user contracts, but not their copying without the consent of the user. From the above stated, it cannot be disputed that for the above mentioned action of the T-com employee there was no legal basis, which violates Article 2, paragraph 1 of the Personal Data Protection Law, stipulating that the processing of personal data may be carried out for a lawful purpose or with the prior consent of the data subject. Taking into account the fact that the problem at hand, caused by the employee who copied the ID document, was reported to the legal service of the Crnogorski Telekom a.d. Podgorica, during inspection supervision, it was

determined that, warning to all shops of Crnogorski Telekom a.d. Podgorica was sent via e-mail, that legal procedure must be adhered to very strictly and that copying of ID documents cannot be done any longer. It was also ordered by inspectors, that all shops should receive a written document containing instructions for compliance to the legal procedure regarding this problem, the work on which begun during inspection supervision.

3. Acting upon the Request No. 01/07 from 23 March 2011 submitted by M.M. from Podgorica, i.e. the representative of the initiative submitter S.Č. indicating irregularities in activities of personal data processing of Telenor d.o.o Podgorica

Supervision determined the following factual state:

Subscriber's contract on the Subscriber's number 38269562XXX was signed between Telenor d.o.o Podgorica and M.M. from Podgorica on 13 February 2011 and on the back of the Contract, ID card was copied. In addition we have stated that the provisions of the Law on Electronic Communication and General terms and conditions of providing services apply to the contractual relation between the Telenor and a Subscriber. Former Promonte GSM /now Telenor/ addressed the Agency for Electronic Communications and Postal Services for obtaining approval for the application of standard Subscriber's Contract on 26 June 2009, which in its Decision from 12 November 2009 No. 02-305/15 gave its consent on the application of the General terms and conditions of providing services. After the approval was obtained, Telenor, on its website www.telenor.me, published the General terms and conditions of providing services, so as to make them available to every future user. Based on the above mentioned it was determined that Telenor can permanently keep the copy of the document used to identify a person (Article 4, paragraph 3) of the General terms and conditions of providing services. By signing the Subscriber's Contract the submitter of the request accepted the terms from the Contract and therefore gave consent for his ID to be copied. Further supervision included control of the manner of filing and keeping the documents and determined that the documents are being kept in a separate locked room with access only to authorised employees, and the deadline for retention in 15 years pursuant to the Law on Archive System.

Supervision determined that there were no violations of the Personal Data Protection Law.

4. Acting upon the Request for the protection of rights submitted by M.R. from Pljevlja, indicating irregularities in personal data processing of the PHI Health Centre Pljevlja.

Supervision determined the following factual state:

On the basis of successively delivered documents by M.R. from Pljevlja which clearly indicates that a certain person during a court proceeding was giving a copy of the M.R.'s health records available for inspection, and which, according to the statement of this person, was obtained illegally (stolen), inspectors of the Personal Data Protection Agency have carried out inspection supervision on 24 June 2011, focusing on the manner of keeping and protecting the data in the patents' medical records.

During the supervision, the inspectors of the Agency were informed that until 1 July 2008 there was a Central Register where medical records of all patients of the Health Centre and that the access to medical records from the Central Register was available to all nurses and other employees in this institution. From the above mentioned, it can be clearly seen that the personal data protection in the medical records, during the existence of the Central Register was extremely low. In addition, it was obvious that the stated problem arose prior to the Personal Data Protection Law entering into force (23 December 2008). As of 1 July 2008, when the chosen doctor project begun, which was also determined during inspection supervision, medical records were placed with appropriate chosen doctors. Supervision determined that patients' medical records are placed in special rooms, in metal archiving bookcases, and that access to these records is allowed only to a nurse, who, in the performance of her activities, is connected to a specific chosen doctor. In addition, the supervision determined that the data from the medical record are kept and stored in an electronic copy for patients of the chosen doctor and access to data, via individual code, is allowed only to the chosen doctor, whose patients have been registered and one nurse which works the shift of the chosen doctor. The Director of the PHI Health Centre Pljevlja, issued an order that medical records, when referring a patient to a specialist, should not be given to the patient,

but they are sent through a nurse, who is in charge for leading the patients and carrying medical records. Based on the above mentioned, concerning the procedures related to personal data treatment from the medical records, for the period beginning at the time the Personal Data Protection Law was adopted, it was stated that positive steps forward were made regarding personal data protection, which are processed in medical records and that their abuse and unauthorised access to these data without the knowledge and responsibility of the specific chosen doctor and his nurse is virtually impossible.

5. Acting upon the letter of the Municipal Police of Rožaje No. 01/26 from 26 July 2011 upon the Request for the protection of rights submitted by the tenants of the building 13 July as of 11 July 2011, indicating to unlawful personal data processing via video surveillance by S.F. from Rožaje.

Supervision determined the following factual state:

Inspection supervision carried out on the basis of the received request No. 01/26 from 26 July 2011 and the initiative of the tenants of the building located in the 13 July Street, stating that the tenant of the same building F.S. on his own initiative has set up video surveillance at the entry of the building and therefore violated their right to privacy. Inspectors of the Personal Data Protection Agency carried out inspection supervision in order to determine the factual state. They determined that the video surveillance device was not set up at the entrance of the building but next to the doorbell at the entrance door of the apartment owned by F.S. Video surveillance is done on the basis of an intercom i.e. by pressing the button located on the device, which activates the camera. In the apartment of the above mentioned person, there is a monitor clearly showing the face of the person activating the camera, main entrance of the building, because the apartment is on the ground floor and joint stairs leading to the next floor. Video surveillance has no possibility to record the video, nor the use of a memory card and it does not have the audio recording possibility. Taking into consideration that F.S. who owns the apartment at the 13 July Street does not have video recording option in the device nor the option of storing and recording personal data, means that there is no possibility of personal data processing nor the possibility of establishing a personal data filing system, and video surveillance in this case cannot be considered a personal data filing system, i.e. processing within the meaning of Article 9, items 2

and 3 of the Law stating that:” the processing of personal data shall mean any operation which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, use, consultation, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction, as well any other operation performed upon personal data”; and that “personal data filing system shall mean any structured, whether centralized, decentralized or dispersed on a functional or geographical basis, set of personal data which are undergoing processing and which may be accessible according to the specific criteria”.

On the basis of the stated facts it was determined that there were no violations of the Personal Data Protection Law and the initiative of the apartment owners No. 01/26 from 26 July 2011 is denied as unfounded.

6. Acting upon the Request for the protection of rights submitted by J.G managing Director of IMMCO LTD New Zealand indicating to use of personal identification documents for the change of mobile phone codes at Telenor a.d. Bulevar Džordža Vašingtona No. 83, Podgorica for U. and V.G from Petrovac.

Supervision determined the following factual state:

On 24 March 2011, at the Telenor store in Budva, an exchange of cards was carried out for (post-paid and prepaid) numbers 069-082-XXX, 069-207-XXX and 069-772-XXX owned by G. V. The change of cards was done for the purposes of registration of subscribers and users of mobile phone services (post-paid and prepaid), regulated by the Law on Electronic Communications and the Rulebook on the manner of registration of public communication network service users. Namely, Article 4 of the Rulebook, paragraph 2 states that „for the registration of the mobile phone user data referred to in Article 3, paragraphs 2 and 4 shall be entered“ which are first and last name and the allocated user number, with the ID.

In July 2010, Telenor d.o.o Podgorica adopted the Rulebook on General terms and conditions of providing services, adopted by the Agency for Electronic Communications and Postal Services, where, in accordance with Article 4,

identification based on original documents is obligatory, as well as the possibility of permanently keeping the copies of original documents used for identification.

Personal Data Protection Agency sent an initiative for amendments of Article 4 of the Rulebook, to prohibit the operators to copy ID documents, which was accepted by the Agency for Electronic Communications and Postal Services and informed Telenor d.o.o. on the amendment of Article 4 of the Rulebook that the operator cannot make copies of the ID document and keep in permanently because it violates Article 2 of the Personal Data Protection Law on 11 May 2011. In this case, Telenor acted within the legal basis because the change of cards was in March 2011 when Article 4 of the Rulebook on General terms and conditions of providing services still applied.

Based on the determined factual state during the inspection supervision the following is concluded:

Personal Data Protection Law, in Article 2, paragraph 1 states that the processing of personal data may be carried out for a lawful purpose or with the prior consent of the data subject. Taking into account that, from the part on the determined factual state, it can be seen clearly that the basis for the change of code or electronic cards is in the Law on Electronic Communications (Official Gazette of Montenegro 50/08) and the Rulebook on the manner of registration of public communication network service users (Official Gazette of Montenegro 77/09 and 24/11), we believe that the personal data processing was done for the purposes determined by law.

7. Acting upon the Request for the protection of rights submitted by the Youth Initiative for Human Rights, and relating to taking DNA samples for analysis by the Police Directorate officer – BO Berane from the person M.M from Berane, without a prior consent of the data subject and without an obtained court order.

Supervision determined the following factual state:

On the basis of a written order from 26 April 2011 No. 03/1-27-1803 given for inspection to the inspectors of the Agency, the order to all heads of branch

offices and offices was issued regarding the commission of a serious offence, that DNA profiles for persons of “B” blood type who are registered offenders must be excluded. Taking into account that the person M.M. has a criminal record, as a perpetrator of 6 offences, given for inspection to inspectors, he was invited to come to the premises of the Police Directorate – BO Berane for the purposes of the above mentioned procedures. Person M.M. received the request, proven by his signature at the delivery note given to inspectors of the Agency for inspection as well. After arriving at the premises of BO Berane, M.M. requested the criminal department inspector to inspect the court order for exclusion of DNA profile. It was explained to him that in pre-trial procedure, police is authorised to, on its own initiative, without an order of the investigative judge and his consent, exclude the DNA profile. Legal basis for the police authorities of such kind can be found in Article 257, paragraph 2 CPC, stating that if there is suspicion that a criminal offence was committed prosecuted ex officio, police is obliged to inform the state prosecutor and on its own initiative or upon the request of the state prosecutor, among other things, take the DNA sample for analysis. Legal basis for police actions described above, is also in Article 154 of the Code, regarding physical examination and other activities, which explicitly states that taking saliva samples for the purpose of carrying out DNA analyses is allowed where it is necessary in order to identify persons or in on order to make a comparison with other biological traces and other DNA profiles and it does require the consent of the person involved nor is this action to be regarded as posing a health risk. The same Article concerning the exclusion of DNA profile excludes the need for a competent court order. Based on the above described legal authorities, M.M, according to the allegations of authorised persons from the BO Berane, without the use of force, a sample of DNA was taken, packed in a prescribed way and with an enclosing letter, sent to analysis to the Forensic Centre in Danilovgrad.

Based on the determined factual state during the inspection supervision the following is concluded:

Personal Data Protection Law in Article 2, paragraph 1 states that the processing of personal data may be carried out for a lawful purpose or with the prior consent of the data subject.

Taking into account that, form the part concerning the factual state, the basis for taking DNA sample for analysis can be seen clearly, without the previous

consent of the person and the order of the competent court, in Articles 257 and 154 CPC, we believe that the personal data processing (DNA) was done for a lawful purpose.

Commentary:

The fact is that taking DNA profile for analysis is not considered to be an action which can endanger the health or life of the data subject. However, it also the fact that excluding DNA profile for analysis according to the above mentioned procedure seriously violates the privacy and identity of the data subject, which is contrary to personal rights and freedoms guaranteed in the Constitution of Montenegro.

In addition, DNA, from the perspective of the Personal Data Protection Law belongs to special categories of personal data, the processing of which requires special stricter treatment, as defined in the Rulebook on the manner of designating and safeguarding special categories of personal data. We suggest the harmonisation of the above mentioned Articles of CPC with the provisions of the Constitution of Montenegro and the Personal Data Protection Law.

8. Acting upon the request for the protection of rights No. 48/01 from 19 December 2012, sent to the Agency by D.H. from Podgorica, regarding the erasing of personal data from the Register of DPS members.

Supervision determined the following factual state:

Inspection supervision determined that the submitter of the request for protection rights, Mr. D.H. on 13 December 2011, submitted a request to the personal data filing system controller DPS for obtaining a copy of the file from the membership records. Secretary of the DPS Committee of the Capital City has immediately following that event, in the presence of the media, made this file available for inspection. After making the file available for inspection, the Chairman of the DPS Committee of the Capital City, V.V. by the decision No. 06-318 from 16 December 2011 informed Mr. D.H. to his address in Podgorica, that the Committee of the Capital City DPS is not obliged to issue a file from its record

to anyone, not even the members of the party, because they only serve for internal membership records, in accordance with Article 14 of the Statute of the Party.

The file in question contains the following personal data: name, surname, UPRN, name of the father, place and municipality of birth, nationality, address, telephone number, e-mail, residence, name of the completed schools, profession – name of the institution or the establishment the person is working for, foreign language knowledge, date of entry into membership, name and number of polling station, local board, file number, gender and signature and it is kept in a locked archive case, with a deadline for use and storage until the membership with DPS expires. The records of personal data of DPS members is also kept electronically i.e. in the record register of the Democratic Party of Socialists of Montenegro. Record register of DPS contains personal data from the file. Data in electronic copy are kept in a password protected computer and are kept until the membership expires.

During inspection supervision, personal data filing system controller DPS has, in the presence of inspectors, erased all personal data from the file and register of the applicant. After the erasing of personal data from the file and the register of DPS of the Capital City, the Committee of the Capital City has notified D.H. and Personal Data Protection Action by its document No. 06-322 from 21 December 2011 thereof.

Based on the determined factual state during the inspection supervision the following is concluded:

Personal data filing system controller DPS, pursuant to Article 11, paragraph 2 of the Personal Data Protection Law has erased all personal data from the file and the record register. Personal data filing system controller informed the submitter of the request on the erasure of personal data, pursuant to Article 23, paragraph 2 of the Law.

On the basis of the determined factual state, this case was ended pursuant to positive regulations immediately after the action of deleting the personal data was carried out.

9. The Agency received the request for the protection of rights No. 01/44 from 02 December 2012, sent by N.N, for the purposes of controlling the work of Crnogorski Telekom. The request states that Crnogorski Telekom delivered data regarding its client, mentioned above as the submitter, as a regular payer of the Hipotekarna banka, the representatives of which contacted him in order to give him a reward, premium card. The submitter wrote to Crnogorski Telekom asking for an explanation, which he did not receive until the moment the initiative was submitted. Several days later, the submitter of the initiative contacted the Agency again asking for cancellation of all activities regarding his request.

10. Standing professors of the Faculty of Mathematics and Natural Sciences dr. N.A. and dr. J.M. contacted the Agency by submitting a request for the protection of rights indicating the violation of their privacy through personal data processing via video surveillance in the amphitheatres where their lectures are held. During the procedure led by the Agency, the Agency Council adopted a Decision ordering physical removal of video surveillance from amphitheatres of the Faculty. Taking into account that the decision was only delivered to the submitters of the request and not the Dean of the Faculty, who was obliged to carry out actions ordered in the Decision there was no removal of video surveillance. The Complaint submitted by the above mentioned professors familiarized us with this fact.

Upon the subsequently delivered Decision of the Agency Council, the Dean was fully compliant and he informed the Agency thereof. We have been informed that the submitters of the request for protection of rights have initiated a proceeding with the Basic Court, with the Agency as the defendant.

11. On Sunday, 04 December 2012, the daily "Dan" published a text under the title "Lukšić and Roćen connected to Šarić" where an alleged list of phone conversations of Darko Šarić was published. That same day, the Prime Minister, Mr. Igor Lukšić and the Minister of Foreign Affairs Mr. Milan Roćen had a press conference. On this occasion the Prime Minister asked that his human rights, which have been violated through the publication of falsified list illustrating that Šarić had a telephone communication with him and Minister Roćen, as the citizen of Montenegro are protected. Personal Data Protection Agency treated the speech of the Prime Minister as the request for the protection of rights, and pursuant to the legal obligation, proceeded in its duties. In this regard, on 5 December 2012, the

Director of the Agency gave an order to the Supervision department to undertake measures and actions aimed at carrying out inspection supervision of involved entities within the competences of the Agency and in relation to the lists of retained data from telecommunication traffic published in the daily "Dan". Supervision was carried out at the Company for distribution, development and exploitation of mobile telecommunication network "Telenor" doo Podgorica and the Police Directorate of Montenegro regarding the obtaining of retained data from telecommunication traffic from Montenegrin mobile operators.

Based on the determined factual state during the inspection supervision the following is concluded:

During inspections supervision of the above mentioned Company, as the personal data filing system controller, it was determined that for personal data processing carried out electronically, the IT system automatically records users of personal data, processed data and the time of entry and exit from the system, which is in accordance with Article 7, paragraph 2 of the Personal Data Protection Law. Legal basis for establishing personal data filing system, regarding the retention of data from telecommunication traffic is in the Law on Electronic Communication in Article 126, item 1. Deadline for keeping retained data from electronic traffic is defined in the same Law and is from 6 to 24 months. The defined deadline for storage of Telenor d.o.o. is 12 months. Competent body for using retained data is the Police Directorate or more precisely the Department of Criminal Police who addressed the operator by its request No. 052/09-139/3 from 92 February 2009, requesting the delivery of data on communication within 069 network, including SMS and calls to service for the number 38269812295 during the period from 01 May 2005 until the moment of control, and which is contained in the list published in the newspapers (the request of Police Directorate was made available to inspectors). After the usual procedure, the legal service of Telenor forwarded the request to the operations service for extracting the lists, which, via CD, and the enclosing letter was delivered to the Police Directorate.

During the inspection supervision, two types of lists were made available to inspectors of the Agency from 15 December 2010 and from 01 November 2011 (taking into account that the list in question from 2008 due to the expiration of the legal deadline is not in the operator data base any more) and two matters have been identified: the form of the list has not changed by comparing this period and the

form of the list published in the newspapers does not match the form of the list of operators given to the Police Directorate. Another matter supporting the fact that the published list was not made by the mentioned operator is a visible trace on the list in question on the date of its printing 28 November 2011, which, according to the previous statements of the deadline for storing retained data from telecommunication traffic, under this printing date, could not be found at the database of the operator.

Based on the determined factual state during the inspection supervision the following is concluded:

Regarding the situation at hand, we are stating that in the procedures and the manner of electronic data processing done by “Telenor” d.o.o. Podgorica, from the perspective of Personal Data Protection Law, there were no irregularities.

Supervision was carried out with the Police Directorate of Montenegro as well – Criminal Police Department-Section for special verifications.

Supervision subject: Activities of the Police Directorate regarding the obtaining of retained data from telecommunication traffic of Montenegrin mobile operators.

The following factual state was determined during inspection supervision:

Following inspection supervision carried out on 10 February 2012 by the inspectors of the Personal Data Protection Agency, it was determined that the Police Directorate of Montenegro fully adheres to the statements from the Decision delivered to Montenegrin mobile operators, that the data on retained data from telecommunication traffic are obtained only with the previous court order delivered to the operator with the request for data delivery.

Legal basis for obtaining data from telecommunication service providers is in the Criminal Procedure Code (Article 257) and the Manual on the Implementation of CPC for Police Directorate employees (verification of establishing a telecommunication connection). In the period after inspection

supervision was carried out on 14 June 2011, until the moment this supervision was carried out, the Police Directorate has, with the previously delivered request, obtained the total of 983 replies to their requests from mobile operators ((MTEL - 327; T-mobile - 314; Telenor - 342). In addition, 16 requests were sent to T-com (land line and internet). Each request towards the operators was supported by an appropriate court order.

Section for special verifications, in relation to the delivery of phone lists by Montenegrin mobile operators, acts exclusively according to adopted Standard procedures regarding the obtaining and using the lists of phone numbers. Procedure of obtaining, processing and delivering lists to a user, in short is as follows:

- The user delivers the request for verification to the organisational unit of the Police competent for verifying the accuracy of identity of telecommunication addresses and contains the following: reasons for verification, parameters for verification, manner of delivery of responses and name of the user and other information available to the police officer which might be useful for verification or make it easier.
- Following the above mentioned, request for the delivery of data, the list, is being prepared and sent to the operator with the previously obtained court order.
- The obtained original list of the operator, which according to its form differs among operators, is reformed and a “processed list” is established by the Section for special verification, by processing automatically the original list file of the operator through a computer programme.
- The “processed list” is different from the original in the arrangement of the columns according to the standard order, and instead of numbers the programme is automatically entering easily recognisable letter marks for each end user regarding the name of the location, type of call as well as the direction of calls in symbols.
- In addition, the “processed list”, automatically, in the columns behind B numbers, contains available information on owners, or their users.

Users of original or processed lists, depending on the need stated in the request, are the organisational units of the Police Directorate, competent prosecutor and court. Regarding the transfer of data from Montenegro, that is the competence of the Division for International Police Cooperation and European Integrations,

which is done on the basis of individually signed Agreements on Mutual Police Cooperation, which inter alia, defines specifically the exchange of data regarding the phone lists. All of the above mentioned, with opinions and recommendations, was processed in detail in the report of an expert, containing the details of ICT nature, and which is enclosed as an integral part of the report on inspection supervision.

13. ANALYSIS OF THE STATE OF PERSONAL DATA PROTECTION

In Montenegro, the awareness that personal data protection is equally important as other human rights is still not high enough. Mass violations of rights have not occurred but individual cases are obvious and they indicate that they occur as the consequence of not being familiar enough with the legislation, its incorrect application or the lack of willingness to implement legal provisions as well as the noncompliance of the existing legislation with the Personal Data Protection Law, ratified agreements and EU Directives.

As we stated in the Report for 2010 and the Interim Report for the period 01 January – 01 July 2011, state in the area of personal data protection is not in a satisfactory level but positive steps have been noticed and appreciable.

The fact that the Agency is facing a great challenge is supported by a rough assessment that more than tens of thousands of legal entities – personal data filing system controllers, both from private and public sector, are processing personal data. A significant number of these entities, public authorities or commercial enterprises are individually dealing with tens or even hundreds of personal data filing systems so their total number is estimated to be several hundreds of thousands. The largest number of filing systems is established by institutions in the area of health care, social welfare and financial institutions. Political parties, religious groups and other non-profit organisations are also collecting data on a significant number of data subjects in order to have insight into the level of support. Therefore, they are obliged, as personal data filing system controllers, to apply necessary safeguards and comply with other obligations prescribed by law.

The Agency performs supervision in accordance with the Personal Data Protection Law, through its inspectors authorised to carry out supervision affairs. Agency has managed to increase the awareness level on the need to protect personal data. It is evident that an increasing number of entities and data subjects are contacting the Agency by asking for opinions, approvals, explanations and also requests for the protection of rights. All of this indicates that the trust in the Agency, as independent institution, is increasing,

Higher level of personal data protection is noted, also through the number of submitted records on filing systems and delivered Rules on the personal data protection i.e. internal acts of controllers regulating personal data protection from access of unauthorised persons. The number of records delivered to the Agency at the second half of 2011 compared to the first half of the year has more than tripled. This effect was achieved through the campaign of the Agency consisting of sending circulating notifications to warn the controllers of the provisions of the Law and the obligation to deliver records. In addition, a specific education is carried out through inspection supervision resulting in supervised entities carrying out their obligation noted down in the record on supervision i.e. among other things, by delivering their existing records on filing systems.

We would like to state that the previous year, regarding inspection supervision, was marked by a high level of cooperation of controlled entities, which is certainly a good thing from the perspective of the Agency. However, the cause for worry is the lack of knowledge of provisions in this area of a majority of controllers. Majority of them are still investing very little efforts to comply with the existing legislation. Therefore in this year, by applying penalty provisions, we will affect the non-compliance of the Law to be appropriately sanctioned.

In 2011, the supervision focus was also on video surveillance. During the process of controlling the introduction and use of video surveillance it was noted that this manner of personal data processing is used massively, disproportionately, mainly contrary to the provisions of the Law and to a large extent. Degree of risk of such unlawful personal data processing is increasing, freely said, on a daily basis.

The basic issue regarding video surveillance concerned the following: lack of Decision of the responsible person of the entity performing video surveillance; failure to display public announcement on video surveillance; lack of opinion of the union representative regarding video surveillance in the working premises where there is an objective need for it; carrying out video surveillance in a larger space in relation to the space of the surveillance entity as well as video surveillance in the part intended for employees or guests violating privacy without a legal basis.

In the reporting year, the Agency has contributed to raising awareness on personal data protection, above all by performing significant supervisions, such as

the supervision of mobile operators and Police Directorate concerning personal data protection, regarding the delivery of lists of phone calls and SMS messages. We believe that the practice until the Decision of the Agency was adopted was not in accordance with the Constitution of Montenegro, international treaties signed and ratifies, and therefore, it must be changed in accordance with the existing legal order.

Progress can certainly be seen in practice because the Police Directorate and operators have complied with the Decision of the Agency, by only using a court order to obtain data form telecommunication traffic, list of phone calls and SMS and data from base stations. This practice, until the amendments to the Criminal Procedure Code are adopted which should contain provisions compatible with European standards, guarantees personal data protection in the part concerning legal basis for collection.

Irregularities noticed in a large number of supervisions are related to the personal data processing to an extent larger than necessary to achieve the purpose of processing, as well as inadequate personal data protection.

Agency, on the other hand, invested great efforts to present itself to professionals and amateurs offering protection to citizens in all situations when they have suspicions that their personal data are processed or protected inadequately.

In the previous practice, we have recognised practices which present the most dangerous risks in the area of personal data protection in Montenegro, therefore, the Agency will focus its special attention to such phenomena. In addition to the previously mentioned, violation of citizens' privacy is done also via direct marketing so activities in this area is a great challenge. We are all witnesses that direct marketing, as an activity enabling the possibility of offering products and services or the communication of certain news via post, phone or other direct means to potential customers or buyers of these product or services, is present in our country. It is very often that we receive various information and offers to our contact addresses, phone or electronic without our consent being given to such data processing.

The application of new IT and communication technology enables a rapid progress of society, but besides its positive side it also has a negative one. By collecting the data on consumers, companies are cleverly adjusting their services or products to their needs thus ensuring larger profits. At each purchase, each of us are being offered a consumer's card which could be used for certain discounts. In that way, the controller is collecting a significant amount of our personal data and gaining insight into our needs and habits. Therefore, every citizen must be careful to whom and why he is giving his personal data i.e. balance the benefit he is obtaining and possible harm from the abuse of data for the processing of which he gave his consent by filling in the application form.

We believe that the citizens still are not fully familiarized with their right to personal data protection, which is why, in addition to training the employees of the Agency as our primary obligation, we will continue educating the controllers and citizens, so that they contact the Agency in a larger number. We have the impression, from the requests submitted, that the citizens have indicated problems in data processing in various areas, from the circumstances of personal data processing without the consent of the data subject, processing scope which is larger than necessary, duration of processing, erasing personal data, etc.

In the Progress Report of Montenegro for 2011, the European Commission stated that the Agency "is still lacking of an adequate allocation in terms of human resources and financing. It is actively involved in protection of personal data. However the Agency has not yet established a prior-checking system, as stipulated by the Data Protection Directive. Its capacities for investigation and analysis need to be further developed and its independence needs to be fully ensured in practice. Legislation on retaining certain personal data has yet to be aligned with the Data Retention Directive".

In addition to the statement that the Agency will actively participate in personal data protection, there are shortcomings to be eliminated in the following period which we also pointed out. We are pleased to state that the efforts we invested have produced results aimed at eliminated the shortcomings indicated in the Report.

14. PLANNED ACTIVITIES

In 2012, the Agency will implement activities in accordance with the Work Plan for 2012, adopted on 21 January 2012, such as:

- establishing the Register;
- organising a Regional Conference;
- employ a Head of Register and Advisor for administrative procedure;
- scheduled and unscheduled inspection supervisions;
- cooperation with competent public authorities in the preparation of regulations regarding personal data protection;
- improving international cooperation through the continuation of concluding Memorandums and Declaration on Cooperation, defining future forms with the agencies of the region and other agencies;
- attendance in national and international gatherings;
- organising seminars and trainings for the improvement of personal data protection, independently and in cooperation with other bodies and organisations;
- activities in raising awareness on the competences of the Agency and educating the general public through the development of publications, flyers, brochures, video material (TV ads) and similar;
- continuation of cooperation and providing instructions and professional assistance to personal data filing system controllers.