

# INSTITUTIONAL FRAMEWORK FOR PERSONAL DATA PROTECTION IN ROMANIA

*Bogdan Manolea*<sup>1</sup>

## **Abstract**

The paper is an overview of the institutional framework related to personal data protection in Romania. It provides a snapshot of the present legal framework on privacy and personal data protection and focuses on People's Advocate activity and the main problems encountered since 2001. Also, it presents basic information and critiques to the new draft law that proposes changes in the institutional framework on personal data protection, debated during these days in the Parliament. The draft law foresees the creation of an independent Data Protection Authority in Romania.

## **CHAPTER 1 - INTRODUCTION**

Romania has no long history on privacy and personal data protection. Although before 1989 the right to privacy was recognised as a fundamental human right,<sup>2</sup> it was frequently infringed, especially by the Romanian Security intrusion. The searches without warrant, with or without a reason, the requisitioning of personal goods, journals or notes just because they would contain critical opinions towards the regime in power, the interception and control of the correspondence and telephone calls were usual practices. Major changes in this domain occur only after the revolution in December 1989. The first reference to the right to privacy occurs in the Constitution adopted in 1991. Although the People's Advocate Institution was created by the Constitution in 1991, it practically started its activity only in 1997 and dealt with few cases related to the right to privacy.

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<sup>1</sup> Bogdan Manolea, APTI – Association for Technology and Internet, Romania, bogdan@legi-internet.ro, Phone/Fax : + 40 21 411 32 55, Mobile : + 40 721 205 603.

Bogdan Manolea is a legal adviser who graduated in 2000 the Law School in Craiova. Owner of the only Romanian web page dedicated to the IT&C Law - Internet Laws -www.legi-internet.ro. Author of over 15 presentations and articles on subjects related to IT&C Law (e-commerce, e-signature, domain names, Internet jurisdiction, privacy issues, etc.) in national and international conferences. He is interested in Information Technology Law and IP Law but also by any subject that involves law, Internet and civic attitude. Founder member of APTI – Association for Technology and Internet

<sup>2</sup> Romania was one of the countries who signed the Universal Declaration of Human Rights 1948

The legislation changes started to occur with the European integration process, which imposed normative acts, adopted in 2001, that are specific for the personal data protection domain.

## **CHAPTER 2 - THE ROMANIAN LEGISLATION ON PRIVACY AND PERSONAL DATA PROTECTION**

### **2. 1 Constitutional provisions**

The Romanian Constitution<sup>3</sup> adopted in 1991 recognizes under Title II (Fundamental Rights, Freedoms and Duties) the rights of privacy, inviolability of domicile, freedom of conscience and expression.

Article 26 states:

*(1) Public authorities shall respect and protect intimacy, family and private life.*

*(2) Any natural person has the right to freely dispose of himself unless by this he causes an infringement upon the rights and freedoms of others, on public order or morals.*

Article 27 of the Constitution states:

*The domicile and the residence are inviolable. No one may enter or remain in the domicile or residence of a person without consent.*

Derogation from provisions under paragraph (1) is permissible by law, in the following circumstances: for carrying into execution a warrant for arrest or a court sentence; to remove any danger against the life, physical integrity or assets of a person; to defend national security or public order; to prevent the spread of an epidemic. Searches may be ordered only by a magistrate and carried out exclusively under observance of the legal procedure. Searches at night time shall be prohibited, except in cases of *flagrante delicto*."

Article 28 states, "*Secrecy of the letters, telegrams and other postal communications, of telephone conversations and of any other legal means of communication is inviolable.*"

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<sup>3</sup> Online at [http://www.cdep.ro/pls/dic/act\\_show?ida=1&idl=2&tit=2#t2c2s0a26](http://www.cdep.ro/pls/dic/act_show?ida=1&idl=2&tit=2#t2c2s0a26)

According to Article 30, "(6) *Freedom of expression shall not be prejudicial to the dignity, honour, privacy of person, and the right to one's own image.*"

## **2.2. Personal data processing in the electronic communication domain**

In November 2001, the Parliament enacted Law No. 676/2001 on the Processing of Personal Data and the Protection of Privacy in the Telecommunications Sector<sup>4</sup> and Law No. 677/2001 for the Protection of Persons concerning the Processing of Personal Data and the Free Circulation of Such Data.<sup>5</sup> These laws follow very closely the European Union Telecommunications Privacy (1997/66/EC) and Data Protection (1995/46/EC) Directives respectively.

Law No. 676/2001 provides for specific conditions under which privacy is protected with respect to the processing of personal data in the telecommunications sector. The law applies to the operators of public telecommunications networks and the providers of publicly available telecommunications services who, in the context of their activities, carry out personal data processing. Provisions regarding security measures, confidentiality of communications, traffic and billing data, itemized billing, presentation and restriction of calling and connected line identification or directory of subscribers are also foreseen in the law. The regulatory authority established by Law No. 676/2001 was originally the Ministry of Communication and Information Technology, but the Government Emergency Ordinance No. 79/2002 with the National Regulatory Authority changed it for Communication (NRAC).<sup>6</sup> No specific department was created to take care of the application of Law 676/2001.

In 2004 Law 676/2001 is practically replaced by Law 506/2004 closely following Directive 2002/58/CE of the European Parliament and the Council on personal data processing and privacy protection in the electronic communication sector, published in the Official Journal of the European Community no.L.201/31.07.2002.

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<sup>4</sup> <http://www.riti-internews.ro/lg676.htm>

<sup>5</sup> <http://www.avp.ro/leg677en.html>

<sup>6</sup> <http://www.anrc.ro/en/index.htm>

The new law entered in force on 17 November 2004 and it divides the task of enforcing the law, between 2 institutions: the National Regulatory Authority for Communication (NRAC) for issues related to electronic communications and the People's Advocate Office for issues related to privacy.

In this sense, the National Regulatory Authority for Communication (NRAC) has attributions related to:

- Security measures for electronic communication;
- Non-compliance with invoice issuing conditions;
- Infringement of the obligations regarding the presentation and restriction of calling and connected line identification.

On the other hand, the People's Advocate Office has attributions related to:

- Listening, recording, storing and any other form of interception and surveillance of communications and related traffic data;
- Use of an electronic communication network with the purpose of storing the thus stored information in the terminal equipment of a subscriber or user or obtaining access to it;
- Traffic data processing;
- Location data processing;
- Subscriber directories;
- Sending Spam.

### **2.3. Personal data protection legislation**

Law No. 677/2001 applies to the processing of personal data performed, totally or partially, through automatic means, as well as to the processing through means other than automatic, which are part of, or destined to an evidence system.

The Law No 677/2001 transposes into domestic legislation the Directive 95/46/EC and establishes the fundamental legal framework for the protection of individuals related to processing personal data in Romania. It regulates the specific

circumstances under which the processing of personal data can be considered lawful. Its provisions also address crucial factors such as legitimate processing, data quality, definitions of the fundamental terms (e.g. operator, data subject, processing etc.), the rights of the data subjects and the obligations of the operators of personal data, and it designates the People's Advocate as the Romanian Supervisory Authority on data protection. In addition to providing guarantees in relation to the collection and processing of personal data, it outlaws the processing of "sensitive" data on a person's race, politics, health, religion, sexual life, criminal record, etc., in the absence of proper legal safeguards. The Law also recognizes fundamental rights for the data subject, such as the right to be informed about the processing, the right to access the information, the right to oppose at any time to the processing, provided that the person has legitimate reasons in this sense. Furthermore, the data subject has the right to oppose to the processing of its personal data, if the purposes of the processing are directed towards marketing research, to obtain or to transmit commercial, advertising or marketing information.<sup>7</sup>

Law 677/2001 applies to the processing of personal data, performed, totally or partially, through automatic means, as well as to the processing through means other than automatic, which are part of, or destined to, an evidence system. Personal data is understood any information referring to a natural person, identified or identifiable; an identifiable person is that person who can be identified, directly or indirectly, particularly with reference to an identification number or to one or more specific details of his physical, physiological, psychical, economical, cultural or social identity. The law stipulates the rules regarding the processing of personal data and the principle of prohibition of processing personal data linked to ethnic or racial origin, to political, religious or philosophic opinions or of another, similar nature, to trade-union adhesion, and also of personal data referring to state of health or sexual life. The law provides certain rights for the people who are subject to such personal data processing such as:

- Be informed about what information is being collecting and why;
- Having access to those data;

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<sup>7</sup> For a detailed analysis of the law please see Precu, Corneliu, "Romanian Data Protection Legislation in a European Context", 2005, Master Thesis, The Master Programme in Law and IT, Stockholm University.

- Intervene to modify the data;
- Object to data processing;
- Special requirements are set for the confidentiality and security of processing.

It sets out rules for the fair and responsible handling of personal information by the public and private sector. Personal information is defined as "any information relating to a natural person, legal entity or group of individuals revealing physical, psychological, mental, economic, cultural or public identity, regardless of the form or method used for its recording." Entities collecting personal information must inform people why their personal information is being collected and what it is to be used for; allow people reasonable access to information about themselves and the right to correct it if it is wrong; ensure that the information is securely held and cannot be tampered with, stolen or improperly used; and limit the use of personal information, for purposes other than the original purpose, without the consent of the person affected, or in certain other circumstances. Sensitive information, including information concerning racial or ethnic origin, political or religious affiliation, health, sexual life, and beliefs, is given special protection and can only be processed with the express written consent of an individual.

The supervisory authority for Law No. 677/2001 is the People's Advocate (also called "Ombudsman").<sup>8</sup> The Organizational and Functional Regulations of the People's Advocate were changed in order to provide the creation of a special Private Information Protection Office (PIPO), concerned with the protection of individuals in relation to private data processing.

The People's Advocate adopted several orders in 2002 in order to apply Law No. 677/2001:

- People's Advocate Order No. 52 (April 18, 2002) for the approval of the minimum security measures for data processing laying at the basis of the operators adopting technical and organizational measures to guarantee a proper legal security level of data processing, Official Monitor, June 5, 2002;
- People's Advocate Order No. 53 (April 18, 2002) for the approval of standardized notification forms, Official Monitor, June 5, 2002;

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<sup>8</sup> <http://www.avp.ro>

- People's Advocate Order No. 54 (April 18, 2002) for the determination of situations requiring the notification of data processing that falls under Law No. 677/2001, Official Monitor, June 5, 2002;
- People's Advocate Order No. 75 (June 4, 2002) to establish specific measures and procedures to provide a satisfactory level of protection for data subjects, Official Monitor, June 26, 2002.

In 2003 the People's Advocate proposed a normative act establishing a notification fee; to that effect, Law No. 476/2003 was adopted.<sup>9</sup>

In 2003, the People's Advocate also issued Order No. 6 of January 29, 2003 that establishes standard contractual clauses for the transfer of personal data to third countries that do not provide an adequate level of protection.<sup>10</sup>

The complaints are solved according to Article 25 Law No. 677/2001. Pursuant to these provisions, the complaint cannot be submitted to the supervisory authority earlier than 15 days from the time a complaint is submitted that deals with the same problem to the data controller. In order to solve the complaint, the supervisory authority may listen to both the respective person and the data controller or, if applicable, the person who represents the interests of the respective persons. If the complaint is justified, the supervisory authority is empowered to order the temporary interruption or ceasing of the data processing, the partial or total erasure of the processed data, and may also notify the criminal bodies or bring a lawsuit.<sup>11</sup>

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<sup>9</sup> Official Monitor, No. 814 of 18 November 2003.

<sup>10</sup> Official Monitor No. 151, 10 March 2003.

<sup>11</sup> Privacy and Human Rights 2004 : Romania , part of the Privacy and Human Rights 2004 by Electronic Privacy Information Center and Privacy International – available at [http://www.legi-internet.ro/privacy\\_ro2004.htm](http://www.legi-internet.ro/privacy_ro2004.htm)

## **CHAPTER 3 - ROMANIAN INSTITUTIONAL FRAMEWORK ON PRIVACY AND DATA PROTECTION**

### **3.1 Institutions dealing with personal data protection**

As it was previously mentioned, practically there are 2 institutions having had attributions in the domain of privacy and personal data protection:

#### **3.1.1. NRAC (National Regulatory Authority for Communication)**

No specific department was created to take care of the application of Law 676/2001. Basically this institution never fulfilled its role mentioned in Law 676 on the protection of privacy and personal data in the telecommunications sector.

Law 676/2001 was practically replaced by Law 506/2004, which transfer all the privacy related attributions to the People's Advocate. NRAC started to take the necessary measures in order to apply Law 506/2004 especially regarding the security measures for electronic communication.

#### **3.1.2 People's Advocate Office**

The Organizational and Functional Regulations of the People's Advocate Office were changed in order to provide the creation of a special Private Information Protection Office (PIPO), concerned with the protection of individuals in relation to private data processing.

The specialized structure established for the implementation of the data protection legislation is provided with 20 positions, out of which according with the Peoples' Advocate website in March 2005, only 15 were filled.

According to the most recent publicly<sup>12</sup> available People's Advocate Report,<sup>13</sup> 266 operators registered with the operator's registry in 2003. They filed 308 notices, of

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<sup>12</sup> At the time when this paper was submitted the People's Advocate 2004 Report, although drafted, was not publicly available. The sources from People's Advocate said that the report will be presented to the Parliament in the beginning of April 2004. After its presentation in the Parliament, the report will be publicly available on the Peoples' Advocate web page – [www.avp.ro](http://www.avp.ro) . However some of the data included



which 29 concerned transfers of personal data abroad. There was a certain increase in 2002, the People's Advocate received 211 notifications of processing of personal data, 145 of which were complete while 66 lacked some information. At the same time, 303 operators reported, out of which 11 declared transfers of personal data abroad. Only one of them managed to receive an authorization, while the others did not meet the necessary conditions.

The report states: "We find that there is a small number of operators registered; it's mainly private law operators that do not notify the fact that they process personal data, although the law has been in force since March 2002." The small number of operators registered is due to the fact that many data controllers have not yet declared that they process personal data, despite the publicity measures taken by the People's Advocate. Data protection legislation is very recent in Romania, and the People's Advocate lacks the resources necessary to make a proper promotion of the legal requirements, which explains why assessing the People's Advocate's competence as a data protection supervisory authority still faces several hurdles. As of end June 2004, there were 1,182 registered data controllers, either as natural persons or legal persons, including central and local public authorities and institutions, as well as private enterprises.<sup>14</sup>

In 2003, the People's Advocate only ordered four prior controls and eight investigations, performed both at public and private operators. In 2004, three investigations and three preliminary controls were carried out. In 2004, the supervisory authority received four claims, most of them involving the sending of unsolicited commercial messages (spam) by direct marketers.<sup>15</sup>

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in the 2004 report can be found in this paper, due to a kind contribution from the Peoples' Advocate staff who send me the Draft Chapter 4 of the 2004 Report before its public release.

<sup>13</sup> See <http://www.avp.ro/raporten.htm> - Report on the year 2003 Activity of the People's Advocate

<sup>14</sup> Privacy and Human Rights 2004 : Romania , part of the Privacy and Human Rights 2004 by Electronic Privacy Information Center and Privacy International – available at [http://www.legi-internet.ro/privacy\\_ro2004.htm](http://www.legi-internet.ro/privacy_ro2004.htm)

<sup>15</sup> Privacy and Human Rights 2004 : Romania , part of the Privacy and Human Rights 2004 by Electronic Privacy Information Center and Privacy International – available at [http://www.legi-internet.ro/privacy\\_ro2004.htm](http://www.legi-internet.ro/privacy_ro2004.htm)

### 3.2 The present institutional framework and its problems

As it can be noticed from the previous chapter, Romania has decided to transfer the responsibility of applying the personal data legislation to the People's Advocate, considering, probably rightly at that time, that this independent institution, having as main objectives the observance of human rights for the citizens of Romania, can fulfil this function for the privacy right as well and implicitly answer for the enforcement of the legislation in the domain of personal data processing.

However, it has been argued that delegating the responsibility to monitor and control the processing of personal data to the People's Advocate is discordant with its fundamental role. Furthermore, by designating the People's Advocate as the Supervisory Authority in the data protection sector, Romania has chosen, like in many other sectors, a different approach to the subject, in total contradiction with all the other European member states and candidate countries. Surprisingly, Romania is the only country among the CEE states that does not have a totally independent and autonomous institution specifically dedicated to protect individuals' rights and to monitor and control the processing of personal data. It represents an attitude, which is unfortunately, a characteristic of the Romanian highly centralized administrative sector, where institutions often have responsibilities and attributions in clear conflict to one another (unclear delimitation of authority), thus creating confusion and impossibility to efficiently perform their legal duties.<sup>16</sup>

We have to admit that the People's Advocate has not received an easy task in dealing with a little known domain where the rights of the citizens as well as the obligations of the companies dealing with personal data processing must be explained in detail. On the other hand, the Government has not considered personal data protection as a very significant subject to consider although it was part of the *acquis communautaire*. Although a special department was created within the People's Advocate institution, we can consider that, after 3 years since its creation, its main objectives have not been fulfilled at the necessary parameters and the privacy and personal data protection has been a secondary topic for the institution. One proof is the decision of the Romanian

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<sup>16</sup> See Precu, Corneliu, "Romanian Data Protection Legislation in a European Context", 2005, Master Thesis, The Master Programme in Law and IT, Stockholm University.

authority, at the insistent pressure of the European Union, to create an independent authority to deal with personal data processing (a topic largely dealt with in the next chapter - 3.3 Changes in the institutional framework in data protection)

Besides, the implementation of the legislation in the domain was subject to criticism in the last report of the European Union: “2004- Regular Report On Romania’s progress towards accession “<sup>17</sup>- quotes:

*“ However, progress in implementing personal data protection rules has only been limited. There are grounds for concern regarding the enforcement of these rules: enforcement activities are far below levels in current Member States and additional posts have not been filled during the reporting period.”*

The situation significantly improved in 2004, when the number of people employed within the personal data protection division of the People’s Advocate institution increased. Also, the activity of promoting personal data protection and the obligations related to this domain, on the occasion of several seminars meant for specific sectors (hotels, tourism, Internet services, health, financial-bank etc), has also increased significantly (5 times as compared to 2003) the number of registered personal data processing operators.

### **3.2.1 Main problems of the People’s Advocate**

We will try to summarize below the main issues that, in our opinion, have led to a rather negative result in this sector for more than 2 years since the entering into force of the law.

#### **3.2.1.1. Policy support**

Personal data protection was considered, during 2001-2003, just a matter that had to be checked in the relations with the EU. The People’s Advocate even expressed publicly his disapproval of this attribution: in a public statement, the President of the People’s Advocate, Ioan Muraru, declared that the designation of this institution as the

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<sup>17</sup> Available at [http://europa.eu.int/comm/enlargement/report\\_2004/pdf/tr\\_ro\\_2004\\_en.pdf](http://europa.eu.int/comm/enlargement/report_2004/pdf/tr_ro_2004_en.pdf)

surveillance authority for personal data processing is against the purpose on this institutions and asked the Parliament to transfer these tasks to other public institutions. He believed that such an institution required very specialized personnel and the People's Advocate did not and could not have such structures. He asked for a specialized Control Authority on Personal Data Processing.<sup>18</sup>

### **3.2.1.2 . Qualified staff members**

Although it is mentioned that a number of 20 people should work within the *Division for the people's protection as regarding personal data processing*, as the latest EU report "2004 Regular Report On Romania's progress towards accession"<sup>19</sup> states: "As regards enforcement and administrative capacity, contrary to the announcement of June 2003 that the number of positions in the Directorate for the Protection of Individuals' Rights as regards Personal Data Processing (part of the office of the Romanian People's Advocate) would be increased to 20, the actual staffing level remained at 14 employees." According to the People Advocate web site in March 2005, presently there are 15 people working in this division

### **3.2.1.3 Passive role**

The People's Advocate had no active role in promoting privacy and data protection, as a fundamental human right. This reactive or sometimes even non-existent role was characterised by a lack of reaction towards events in Romania having involved personal data protection and privacy. Thus, there were several normative acts with influences in the domain of personal data protection that were adopted and debated by public opinion but the Public's Advocate had no public reaction or authorised opinion. Although the introduction of an electronic identity document including information on social security number or other sensitive personal data was discussed for a long time, starting with 2003, there was no official opinion of the People's Advocate on this topic.

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<sup>18</sup> *Avocatul Poporului își declină competențele privind protecția datelor cu caracter personal* (The People's Advocate Declines Responsibilities on Personal Data Protection) Azi, 13 February 2004, available at <http://www.azi.ro/arhive/2004/02/13/social.htm#stirea2>

<sup>19</sup> Page 59 of the 2004 Regular Report On Romania's progress towards accession - Available at [http://europa.eu.int/comm/enlargement/report\\_2004/pdf/rr\\_ro\\_2004\\_en.pdf](http://europa.eu.int/comm/enlargement/report_2004/pdf/rr_ro_2004_en.pdf)

The project should have been finalised in 2007. Finally, the project was postponed due to technical reasons, and it supposes to start only on January 1, 2006.

In this sense we have also in view Government Decision No. 952 of August 14, 2003<sup>20</sup> that is setting up an Integrated Informational System (SII) The SII is a database that will centralize the information held by all public institutions on natural and legal persons. It may become the electronic arm of the Romanian Intelligence Service (SRI). Some NGO's or media have tried to take the role of the Data Protection Authority and publicly criticize the draft normative acts that may infringe the privacy right: As regards the creation of the Integrated Informational System (SII), both the Association for the Defence of Human Rights in Romania – Helsinki Committee (APADOR-CH) and the media criticized this decision by arguing that the Government Decision was not legal, and because of the threats the decision raises for certain fundamental rights, especially the right to privacy. APADOR-CH considered that the government resolution refers to a decision of the Supreme Defence Council (CSAT), which could not be substituted to the Parliament's. APADOR-CH's representative Manuela Stefanescu said: "We do not know to whom this integrated information system is subordinated; we do not know to whom it is of use, and it is extremely dangerous to create a superpower, especially without the slightest guarantee that the personal data will be protected. . . . Furthermore, natural and legal persons lack any means of controlling the way in which the data centralized in this mammoth system will be used. . . .".<sup>21</sup>

APADOR-CH filed an administrative complaint with the Government, based on Article 5 of Law 29/1990 on administrative courts, pointing out that the decision was illegal and violated the right to privacy, and requesting that the decision be annulled/withdrawn.<sup>22</sup> The government rejected all objections. As a consequence, the APADOR-CH as a legal entity, and two of its members as individuals, filed a court complaint considering that the decision has seriously infringed upon the subjective right to privacy of APADOR-CH's members (as well as of all other people), a right guaranteed by Article

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<sup>20</sup> Official Monitor No. 631, 3 September 2003

<sup>21</sup> Evenimentul zilei, 29 September 2003, available at [http://www.evz.ro/english/?news\\_id=132980](http://www.evz.ro/english/?news_id=132980)

<sup>22</sup> See the complaint in the APADOR 2003 report available at <http://www.apador.org/rapoarte/anuale/report2003.htm>

26 of the Constitution and Article 8 of the European Convention of Human Rights. No decision has been taken by the court yet.

#### **3.2.1.4 Lack of adequate publicity until 2004**

During the first two years of the People's Advocate Office activity there were only 2 seminars entitled "Protection of persons as regards the personal data processing in the activity of public authorities and institutions", attended by representatives of 40 public and central public authorities and institutions, according to their 2003 Report. The report does not provide any further detail regarding location or participation. Also, the strategy of the people's Advocate has not included the attempt to attract non-governmental organisations to dissemination the information in this sector or to explain the significance of personal data protection.

Modifying the strategy in 2004 brought significant results. The People's Advocate organised 8 seminars and a round table, with the participation of personal data operators and non-governmental organisations, in relevant activity domains, as follows:

- February 2004 – seminar "Protection of personal data in insurance domain";
- March 2004 – seminar "Protection of personal data in the financial-bank domain" and the round table with the subject "Role of the non-governmental organisations in informing citizens on the right guaranteed by Law no. 677/2001";
- April 2004 - seminar "Protection of personal data in the health domain";
- May 2004 - seminar "Protection of personal data in the hotel service domain";
- June 2004 - seminar "Protection of personal data in the transport domain";
- September 2004 – seminar with the topic "Protection of personal data in the Internet service provision domain";
- October 2004 - seminar with the topic "Protection of personal data in labour recruiting and employment" ;
- November 2004 - seminar with the topic "Protection of personal data in activities carried out by tourism agencies" .

A direct result of the information means and the presence on the market is the visible increase in the People's Advocate activity in the domain. The report for 2004 of the

People's Advocate Office states: "As compared to 2003 there is a visible progress; the number of personal data processors **increased 5 times** and the number of notifications increased by **300%**. Until now, a total of 97 notifications have been registered having as object personal data transfer abroad. Out of these, in 2004, 57 transfer notifications were registered. The progress is remarkable in this sector also as compared to the previous years, the notifications for transfer abroad of personal data having increased by 196.5%, as compared to 2003. For the transfer abroad of personal data, in 2004, 53 de authorisations were issued out of the total of 66."

### **3.2.1.5 International collaborations**

Taking into account the latest development on data protection and the technological conquests, the international cooperation becomes an important component of the Data Protection Authority's (DPA) activity.

Other DPA's in Eastern Europe (Czech Republic, Hungary, Lithuania, Slovakia, Estonia, Latvia and Poland) have proven to be more open to this cooperation. The data protection Commissioners from Eastern Europe are collaboration since December 2001 when they have signed a joint declaration agreeing to closer cooperation and assistance. The commissioners agreed to meet twice a year in the future, to provide each other with regular updates and overviews of developments in their countries, and to establish a common website for more effective communication.<sup>23</sup> Some information on Bulgaria's legislation on personal data protection is also available. No information on Romania is available, yet.

In the latest report – 2004, the People's Advocate is mentioning exchanges of information with 3 Data Protection Authorities and participation to two European conferences on data protection issues.

A more substantial capacity building might be obtained in 2005 when "an experience exchange is planned with the Guarantor of personal data protection of Italy, for the training improvement of the personnel with activity in the domain of personal data protection, especially for the improvement of investigation and control techniques. This

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<sup>23</sup> See - <http://www.ceecprivacy.org>

experience exchange is achieved with the support of the Technical Assistance and Information Exchange Office (TAIEX) of the European Commission and is one of the measures in the Action Plan in the domain of personal data protection, for the period June 2004 - December 2005.”<sup>24</sup>

### **3.3 Changes in the institutional framework in data protection.**

All these lacks in the enforcement of the law on data protection did not concern very much the Romanian Government. However, the occurrence of these lacks in the European Union country report for 2004 made the authorities in Bucharest anxious.

Thus, in a short time, within the Consultative Council of 30 August 2004 for the integration into EU – the Ministry of Internal Affairs, the Ministry of EU Integration and the People’s Advocate discussed the data protection issue. Even though no representative of the NGO sector was invited, one of the conclusions of the meeting was that “The civil society can play a bigger role in informing the people on personal data protection and to support the public administration in this field”<sup>25</sup>

A draft act on the creation, organisation and operation of the National Authority for the Surveillance of Personal Data Processing was quickly prepared and available for public comments on the Ministry of EU Integration website on 9 October 2004.

Our association (APTI – Association for Technology and Internet)<sup>26</sup> has provided some comments on the draft act – especially to give the new authority the possibility to be consulted at least on future normative acts that may involve fundamental rights and liberties of natural persons, especially the right to privacy in relation to personal data processing and free circulation of these data. We have supported also the idea of a consultative council or a proper working method with the non-governmental sector. We have also expressed our availability to participate in any public discussion in this domain. Until now, we have not received any answer regarding our suggestions or the status of the law.

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<sup>24</sup> People’s Advocate draft Report 2004 – should be available from April 2004 on [www.avp.ro](http://www.avp.ro)

<sup>25</sup> See the press release at [http://groups.yahoo.com/group/romania\\_eu\\_list/message/16950](http://groups.yahoo.com/group/romania_eu_list/message/16950)

<sup>26</sup> More info on APTI at <http://www.apti.ro>



The same draft unmodified was submitted to the Parliament for discussions on 7 December 2004.

The act aims to establish the “National Authority for the Control and Supervision of Personal Character Data Processing” (ANSPDCP). The New Authority shall have at its disposal all necessary resources (logistical, human capital-dedicated specialists, administrative structures, as well as financial means) in order to ensure an efficient and correct promotion and implementation of the Law. The Authority shall have a President with the rank of Ministry and a Vice-President with the rank of Secretary of State, both appointed by the Romanian Senate (the Romanian upper Parliamentary Chamber). The Permanent Bureau of the Senate shall appoint the candidates for the 2 positions, after consulting the proposals addressed by the parliamentary groups from the 2 Parliamentary Chambers. In order to ensure continuity in the activity of data protection, the draft law stipulates that the New Authority shall become operational in 90 days after the Law comes into force and stipulates clear responsibilities for the new institution. It also regulates the transfer of the database from the People’s Advocate Office to the New Authority.<sup>27</sup>

The proposed draft is, without any doubt, one step ahead to a better protection of personal data if it is only for the creation of an independent state institution, with a president and vice-president appointed by the Senate, for a 5-year period. The possibility of employing a number of maximum 50 people within this authority is also foreseen.

There are however a few problems the draft does not solve and that can raise some questions regarding the capacity of the new institution to solve the problems:

1. The major difference between the present draft proposing an independent authority and the existence of a division within the People’s Advocate Office is just the externalisation of a service to an independent institution. However, the independence issue was not the major problem, but that of a competent personnel and a good strategy to enforce the law;
2. The issue of employees will still remain a delicate one. An advantage could be the creation, in time, of a body of experts (maximum 50, excluding the president and

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<sup>27</sup> Precu, Corneliu, "Romanian Data Protection Legislation in a European Context", 2005, Master Thesis, The Master Programme in Law and IT, Stockholm University.

vice-resident). But, will this institution be interesting enough for young people, under the conditions of preserving the present public officer status (with a low salary level implicitly)? We would rather support the idea of creating a small but better paid body of experts who would be more motivated to achieve proper expertise;

3. Unfortunately the normative act does not mention the word “privacy” at all. We believe such an institution could easily have also a privacy – related role (especially as the “Privacy right “is present only in the Constitution but in no other adopted law);
4. The draft act does not foresee any consultative role or even the obligatory opinion of the new authority on the draft laws that are debated in public or in the Parliament. The only possibility for the new authority to include the recommendations on the draft acts is the yearly report that need to be presented in front of the Senate;
5. The appointment of a president and vice-president for a 5-year period is an excellent option. But, at the same time, the law should provide the appointment of a competent person. The minimum 15 years of experience in the main domain he (she) was specialized during high education period or subjective terms such as “good reputation”, “enjoys high civic integrity” are not enough to choose a person capable not only to manage such an institution but also to change the way this domain is seen. Maybe a better solution would be to include a minimum expertise in human rights or even activities in the domain of privacy or personal data protection. Furthermore, each candidate should come with a concrete activity plan, which would represent an objective assessment for his (her) future activity as well.

The Chamber of Deputies approved on 8 March 2005 the proposed draft, in its initial form. Although a series of amendments or re-discussions have been proposed by the opposition members, they were rejected due to procedure matters or “Non compliance with EU requirements”.

Besides, the declaration of the People's Advocate at the plenum of the Deputy Chamber<sup>28</sup> meant to support this normative act makes us doubt the intention of the government and of the People's Advocate of treating this matter seriously:

*" I want to inform you that the experts in Brussels have agreed with the draft, to the letter, there are reports from Brussels, therefore, these drafts were accepted only after the conviction was created in Brussels that this authority will be entirely autonomous, totally independent. And this autonomy and independence, eventually, was approved, to say so, only if the president and vice-president will be appointed by a parliament assembly so that it may be no subordination to the Government or the ministries... No doubt you can bring, I know, improvements, amendments. I repeat, within the report that has been sent from Brussels, which exists with the documents submitted by the Government to the Parliament, it is very clear, sometimes, I repeat, to the letter, how such a project should look like. It is a question that is related to our acceptance in the European Union if I may say so although this matter is beyond me somehow."*

## **CHAPTER IV CONCLUSIONS**

The legislation of a country as regards the personal data protection, even identical with the one in the European Union or other western countries, can be only a first step in addressing the right to privacy and personal data protection. Maybe more important than the legislation itself is the political decision to create and support an independent authority for the personal data protection with a minimum of competent personnel. This authority has then the responsibility of creating the right strategy for its purpose that should include awareness campaigns for the citizen's rights related to personal data protection. These campaigns can be carried out even more efficiently in collaboration with the non-governmental organisations as well. The authority, in all its activities, must not forget the purpose of its creation: to safeguard the privacy and provide personal data protection for its citizens.

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<sup>28</sup> Available at <http://www.cdep.ro/pls/steno/steno.stenograma?ids=5812&idm=6> (Only in Romanian)

But the central point in personal data protection is the political decision to address privacy and protection of personal data. It should not be seen like just another requirement of the accession to European Union or other bodies, but as a necessity for your citizens. Only after this decision is taken, we can start debating the laws and their best enforcement in a proper manner.

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