



Country or jurisdiction report

LITHUANIA

Website: <http://www.ada.lt/>

1. Important amendments with respect to the legislation on personal data protection

Implementation of Directives 95/46/EC and 2002/58/EC and other legislative developments.

1. State Data Protection Inspectorate (hereinafter 0 the Inspectorate) prepared the Rules of Prior Checking that were approved by order of Director of the Inspectorate No IT-6 of February 2, 2006. The Rules specify the content of the Notification, it's submission and procedure for prior checking.
2. Following the Resolution of the Government of the Republic of Lithuania No. 1317 of December 7, 2005 the Inspectorate issued a new recommendable form of Notification on data processing.
3. On the 25th of May, amendment of the Law on the Population Register 2006 was adopted, establishing that facial image, fingerprints, personal signature shall be stored in the Population Register. The data indicated may be disclosed only to law enforcement institutions and institutions issuing personal identify documents.

II Interesting issues related to personal data protection

Direct marketing

The Inspectorate is receiving increasingly more complaints related to offerings of goods and services by phone, post or other direct ways to persons without their consent.

One applicant complained about the promotions carried out by the telecommunications company, during which by random order of numbers the calls are made to persons asking them to listen information on the proposed services by the agencies and upon person's consent the latter is invited to subscribe to the telecommunication company. The described sections are being completed during the single phone conversation. Paragraph 1 of Article 68 of Law on Electronic Communications of the Republic of Lithuania (hereinafter – the Law on Electronic Communications) established, that the use of electronic communications services, including electronic mail, for the purposes of direct marketing may only be allowed in respect of subscribers who have given their prior consent. During the investigation of the complaint it was determined, that the telecommunications company before making calls to persons for the purposes of direct

marketing had no person's consent. The Inspectorate drew up the protocol on administrative offences to this company. The court of first instance, upon hearing administrative case, conclude, that the Law on Electronic Communications establishing the authorization to use electronic communications services for the purposes of direct marketing (commercial purposes) with available prior subscriber's consent, does not define the concept of the prior consent, the way of obtaining it, the term which might imply that consent should be considered as obtained in advance. Therefore the requirement for prior consent applies also in case when company calls to randomly selected phone number and at the beginning of conversation the subscriber's consent is asked if he agrees to listen to information on proposed services. The Supreme Administrative Court of Lithuania, after hearing an appeal, decided, that the subscriber's consent to use the electronic communications services for the purposes of direct marketing in terms of paragraph 1 of Article 68 of Law on Electronic Communications should be obtained (received) prior to the means deployed for the direct marketing but not at the (same) time of promotions.

Thirteen (13) complaints were received concerning the book publisher, which sent to persons offers to enter the game without having person's consent. This company on the terms of subcontract assigned a private enterprise to collect personal data of potential clients, to store them and administer the data base. The latter bought personal data from other private company, which personal data collected from public resources. When performing the inspect on the lawfulness of personal data processing, the Inspectorate drew up a protocol on administrative offences to the head of the book publisher on the ground that personal data were processed for the purposes of direct marketing without having person's consent and that the persons were not informed about such processing. When hearing the administrative case, the question arose, who was the data controller whether the book publisher, that obligated by the contract the private enterprise to collect personal data, or whether the private company (enterprise), which was assigned to collect personal data. The court decided that the data controller is the book publisher, since the contract included clearly defined purpose of data collecting and further processing – selling of goods for the purposes of direct marketing, the means of processing – creating of data bases.

The principles of data processing

More and more problems arise concerning the administrative prosecution of persons for infringement of general principles of data processing. Paragraph 1 subparagraph 4 of Article 3 of Law on Legal Protection of Personal Data of the Republic of Lithuania envisages that personal data shall be identical, adequate and not excessive in relation to the purposes for which they are collected and processed. The Inspectorate drew up a protocol on administrative offences for infringement of this principle, because one private company collected an excessive personal data element – personal identification number, which is not necessary for data processing purposes (accountancy). The Supreme Administrative Court of Lithuania stated that the interpretation of general principles exclusively due to such nature of legal regulation cannot be clearly defined, precise and uniform. In addition, the principles specified in the law as well as the purposes, regulatory scope and other general introductory provisions of the law as a rule are explained and applied systematically together with other legal regulations. Especially questionable becomes direct application of regulations of common

declarative nature when defining actions, entailing legal responsibility of prosecutorial aspect. Administrative responsibility may occur only for disregard of explicitly and unambiguously formulated prohibitions, but not for infringement of general principles. Therefore administrative prosecution for the infringement of general principles, without indication of specific, by law established imperatives, which were infringed, is impossible (unacceptable).

Tapping conversations in banks

The Inspectorate carried out inspections in banks in relation to the recording of clients' conversations. During the inspection it was determined, that majority of banks are making records of telephone conversations in both cases – when bank workers are calling to existent client and when a person (the existent client or any other person) is calling to bank. Usually the outgoing phone calls and the conversations during them are recorded for the purposes of providing evidence of a commercial transaction or of any other business communication. Most frequently the existing bank clients are informed about recording of conversation upon conclusion of a contract with the bank. However, it was determined that those bank clients, who have not concluded a contract, are not being informed neither about the recording nor the purpose of the recording. Several banks recorded incoming calls, when both the bank client and other person were calling to bank by publicly available telephone numbers for information and consultation aiming to get information to questions pertaining to the performance of the contract as well as enquiring about other services provided by the bank. Where the calls were made to the publicly available telephone numbers on questions not pertaining to the performance of the contract, the personal identity of the calling person was not revealed, although it was fixed from which telephone number the call came. During the inspection it was determined, that the consent of the calling persons was not received and they were unaware of recording. These phone calls were not related to the purpose of providing evidence of a commercial transaction or of any other business communication. Pursuant to paragraph 1 of Article 63 of Law on Electron Communications, bank may record this kind of telephone conversations when the call is meant for obtaining information or consultation only with the calling person's consent. After inspection banks have improved the former situation, bank clients are informed about recording of phone conversations and the purpose of recording (for instance, at the beginning of each conversation the clients are informed about recording in such way clients are granted the possibility to reject the conversation).