



Federal District Institute of Access to Public Information (Mexico City)

Acceso a la información y protección de datos personales: dos caras de un mismo derecho - 2º Seminario Internacional

Convention 108

new challenge for data protection in non-European states

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The scope of the presentation

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History of data protection legislation in Europe

Overview of major data protection legislation

Convention for the Protection of Human Rights and Fundamental Freedoms and its role for data protection

Data protection and the Council of Europe

History of the Convention 108

Additional Protocol to the Convention 108

Committee of Minister´s Decision on acceding of non-Member states to the Convention 108

Council of Europe data protection instruments

The principles of data protection lay down by the Convention 108

The Committee of Ministers of the Council of Europe adopted on 2 July 2008 decision concerning permission to accede to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) for non-Member States of the Council of Europe. This Decision allows accede to the Convention for any countries which data protection legislation is in accordance with the Convention 108.

The adoption of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108, known as Convention 108) was a reaction by the Council of Europe to the growing volume of automatic processing of personal data as a consequence of advancements in information technology and means of keeping and processing information in digital forms. The principles laid down in Convention 108 concern in particular the fair and lawful collection and processing of personal data, the collection of personal information solely for the specified and legitimate purposes, ruling out the processing of data for other purposes, incompatible with those for which the data were collected, the time limitation for the processing of data after the achievement of the stipulated purpose, etc. The purpose of Convention 108 is to strengthen the protection of personal data relating to specific individuals.

Defining the “privacy” is not an easy task because privacy concerns our very existence and the quality of our lives as individuals - who we are, what we know how to do, what we think, what we like, what we have done or what we intend to do. The protection of privacy is thus the protection of the individual, the protection of his way of life, originating from his personal rights.

The basic level of the protection and the right to privacy in modern history was declared by the Universal Declaration of Human Rights, adopted by the United Nations on December 10, 1948. Article 12 of this Declaration stipulates:

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

The Council of Europe, founded in 1949 (London, May 5), included in its statute its *“devotion to the spiritual and moral values which are the common heritage of their people and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy”*.

Strongly influenced by the Universal Declaration of Human Rights, the Council of Europe adopted in 1950 (November 4 in Rome) a Convention for the Protection of Human Rights and Fundamental Freedoms (ETS no. 5). Under article 66, paragraph 3 the Convention came into force on 18 May 1953. Gradually the Convention was supplemented by Additional Protocols; at the present time there are 13 of them (the 13th Additional Protocol was adopted in May 2002 and concerns the abolition of the death penalty).

The safeguard of privacy is declared in Article 8 of this Convention:

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of his right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

After 1970 the European countries began to adopt legal regulations protecting the fundamental rights of individuals and in particular protecting the right to privacy, including protection against disproportional collection and processing of personal data.

In 1970 the state of Hessen (Germany) adopted the first law on the protection of personal data in the world. It was followed by Sweden (1973), Germany (Federal Act, 1977), France (1978) and other countries. Five years after the issuance of Resolution 74(29) a number of countries had adopted legislation for the protection of personal data (besides those named above they included Austria, Denmark, Luxembourg, Norway). Three countries included data protection among their constitutionally guaranteed rights (Portugal, Spain and Austria). Some states focused their legislative activities only on data processed by computers others approached this problem in its wider context, extending protection to the processing of personal data by any technical means.

The international experience, however, gradually showed that the protection of personal data cannot be addressed exclusively at the national level only. The growing volume of personal data transfers between states, the creation of national databanks, the increasing movement of persons regardless of state borders, the growing international cooperation with respect to science and research, placed new requirements on international coordination for the purpose of personal data protection. It was necessary to unify the principles of personal data protection and define uniformly the risks following from their unrestricted transfer. These needs were also the motivation of the Organization for Economic Cooperation and Development (OECD, which in 1969 elaborated a study on the transfer of data across state borders for the needs of the public sector); in September 23, 1980 this organization issued Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data. OECD cooperated in the preparation of this document with the Council of Europe, which at that time had already prepared a draft Convention on Privacy. This document for the first time defined the terms that then are used in all subsequent legal regulations.

There are several Council of Europe instruments for implementation data protection principles into daily practice (e.g. recommendations, reports, opinions). The scope of the presentation is to demonstrate how the data protection principles laid down by Convention 108 must be understood and implemented to the national data protection legislation.