

IURIDICUM REMEDIUM

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Czech republic – Iuridicum remedium

Introduction and methodological choices

Definition of the focus of this report was based on following inputs:

1. debates and minutes of the kick-off meeting of the project that took place on 13 – February 2009 in Paris.

At the meeting were defined four main areas of the research (Mobility and transportation, Biological identity, Interpersonal communications, Social networks and new gate keepers of communications) and also proposed a structure of the report and common matrix grid.

2. debates and meetings of the team of Iuridicum Remedium. These were used to further precise a focus and to select specific cases to be filled in matrix grid/tables. In these discussions following criteria for choosing specific cases were adopted: case should represent more general trend, should be related to latest development of new technology, approach or policy, should be relevant to youngsters (their data being exceedingly at stake).

In the following research were used bellow mentioned resources:

a) results of previous expertise, findings and campaigns of the members of a team Iuridicum Remedium

b) nominations of the general public to the Big Brother Awards contest organised by Iuridicum Remedium – include more than 70 state and nonstate actors affecting privacy, list can be found at

<http://www.slidilove.cz/nominace/aktualni>

c) Annual report 2008 of the Czech DPA

d) consultations with Karel Neuwirt (former chief of Czech DPA), Jiří Peterka (Faculty of Mathematics and Physics of Charles University, journalist and IT expert at lupa.cz), Jiří Šimůnek (Ropid, transportation expert), Tomáš Rosa (eBanka, cryptologist).

e) returned questionnaires prepared by Iuridicum Remedium

f) media monitoring and research

g) research in current legislation

On the bases of discussions within a project team (LDH, EDRI, Pangea and Iure) a discussions within team of Iuridicum remedium (Filip Pospíšil, Marek Tichý, Helena Svatošová) consultations with experts and preliminary research, structure and questions of questionnaire were

defined and relevant actors identified. During March, April and May individualised questionnaires were sent to the following subjects: Ministry of Interior, Presidium of Police, Institute of health information and statistics of the Czech republic, State Institute for Drug Control, Institute for information on education, VZP ČR (largest czech health insurance company), ZPMVCR (Health insurance company of the ministry of interior), DNAtest.cz (company offering genetical testing), GTS ALIVE s.r.o. (largest company offering student cards), Secondary technical school in Prague 10 (one of the biggest school with elaborated card system), Seznam.cz (company operating social network services Lide.cz and Spoluzaci.cz), Libimseti.cz (company operating social network service), Czech airlines, Czech railways, HAGUESS, a.s. (operator of the Pragues' opencard).

From the approached state institutions and companies none responded to the questionnaire in full detail. Ministry of the Interior has responded on 20th April 2009 with the request of paying of 11295 Kč (approx. 420 Eur) for research and administrative costs related to the response to the request. After paying of this amount ministry has sent on 29th April 2009 a letter containing a list (enclosed table) of 21 databases operated by the ministry. There were however missing information regarding some of the databases related to the category of the data stored, whose data are stored, period of data retention, regulation of the access to the files, purpose of storage was in many cases defined just with broad reference to individual Act, etc. Iuridicum remedium has filled on 11th May 2009 an appeal to the Minister of Interior. In his response to the appeal Minister of Interior Martin Pecina on 3th of June 2009 acknowledged that some information in the response were missing and requested ministry to prepare new response in 15 days after delivery of his decision. Minister refused however to return of the payed costs.

Police presidium responded on 5th of June with a letter containing a list (enclosed table) of 35 databases operated by the czech Police. There were however missing information regarding some of the databases related to the category of the data stored, whose data are stored, period of data retention, regulation of the access to the files, purpose of storage was in many cases defined just with broad reference to individual Act, etc.

Iuridicum remedium is about to initiate a court proceeding with two above mentioned institutions according to the Act No. 106/1999 Coll. on Free Access to Information which covers the "state agencies, territorial self-administration authorities and public institutions managing public funds" as well as any body authorised by the law to reach legal decisions relating to the public sector, to the extend of such authorisation.

Institute for information on education and Institute of health information and statistics of the Czech republic has responded partially. Remaining state institutions and private companies have not filled the questionnaire. Here it is important to note that Freedom of Information Act doesnot apply to private companies. None of the institutions and companies has also detailed information on way it processes personal data of clients, patients, users etc. publicly available (for instance at their web pages) nor in a Contracts, Rules of use etc. despite Act 101 of April 4, 2000 on the Protection of Personal Data provides for: »(4) When giving his consent the data subject must be provided with the information about what purpose of

processing, what personal data, which controller and what period of time the consent is being given for. » In case of the state institutions where processing of a data is regulated by special law and consent of the data subject is not required information policy regarding data processing is very poor. Insufficient information policy of the controllers and processors of the data towards data subjects is one of the first and major findings of this research.

Summary of findings :

1 Mobility and transportation

Two of the selected examples (Inkarta of the Czech railways and Pragues´ Opencard) shows extend and risks of newly introduced RFID chip technology in cards used as season discount cards in public transportation. Both projects were introduced without proper assessment of the privacy risks and these risks are not properly analysed even two years after the start of the project. Projects also sneakingly broadens its scale (introduction of other services and other groups of users). They do not provide user with the possibility of choice for anonymous service for adequate costs. Users are not properly informed of the extend their data are processed and their rights regarding data stored. Cases also demonstrate the need for adoption of a new legislation on RFID chips. Third example of technology in this chapter - PNR data transfers - shows lasting practice of personal data transfers contravening European legislation and trends towards enlarging of controversial practice worldwide including an attempts to include EU PNR scheme.

2 *Biological identity*

There were selected two cases (one state institution – National DNA database) and one private company (Genomac) representing new technology of DNA analysis and subsequently created databases of profiles and DNA samples. In both cases there were recently serious misconducts confirmed by the inspection of the Czech DPA. Cases illustrate also need for new legislation dealing specifically with DNA databases and necessity of broader public awareness campaign on privacy risks related to compromising of sensitive information contained in DNA profiles. Another examples in this chapter show increasing trend in creating databases of state health policy institutions containing sensitive information on health state of the patients. Fourteen eHealth registers were created in recent years without clarification of their concept, respect to free consent of the patient with the procession of the data and with accidentally defined terms of data retention. New register which is being build just in the last months – Central repository of electronic prescriptions – even lacks legislative bases and there are indications that due to outsourcing of the procession of the sensitive data those might end up in the hands of private health insurance companies.

3 *Interpersonal communications*

In this chapter only one most significant example of creation of databases of providers of telecommunication and electronic communication is represented. Necessity of assessment of the legislation and practice by

the Constitutional court as well as broader public discussion on a practice of retention of data on electronic communication is demonstrated here.

4 Social networks and new gate keepers of communications

For this chapter the team has selected four cases of most popular social networking services in the Czech republic. Despite series of awareness campaigns by service providers, DPA, state institutions and NGOs targeted on young users of the services and protection of the privacy in the Internet, companies providing service of social networks have not adopted transparent information policy on the way they process or share data of the users. Some of the security arrangements introduced by providers of the services were found insufficient.

5. Databases of the data of the youth

Apart from four defined areas of research team of Iuridicum remedium has also decided to add two more selected cases to the report. This decision was induced by previously declared ambition of the report to reflect on the practice of data protection and data protection risks with special emphasis on protection of the data of the youth. In the last decade state authorities responsible for education policy started to create centralised databases of personal data of general population of students and pupils. However whole concept of these registers is unclear, sometimes lacks proper legislation. Free consent of the students with the procession of the data is not respected, assesment of the privacy risks was not properly completed. Information on measures on right to access and edit the data, auditing of access to the data are not publicly available.

Podpořili nás:



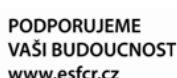
Ministerstvo práce a sociálních věcí



Trust for Civil Society in Central & Eastern Europe



Open Society Fund Praha



Lichtenštejska a Norska v rámci

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