

POLAND TAKES FIRST STEPS TOWARDS A DATA PROTECTION LAW

Ombudsman, Professor Ewa Letowska, explains that despite a low level of data protection awareness in Poland, there are proposals for a data protection law - and opens up her privacy case file.

In Poland today the problem of storage and protection of the data concerning citizens collected by the authorities is a subject of interest to very few - maybe a handful of scientists and journalists. Otherwise, hardly anybody has any interest.

There are two main reasons:

- a) Poland has few computers and most people lack awareness of the possibilities and dangers created by computerization.
- b) traditional means of communication in Poland are poorly organized.

These factors cause a lack of information flow, which is characteristic of modern societies, and a lack of feed-back between different parts of the state structure.

Futuristic Nightmare and Vision

The situation in Poland does not justify the futuristic vision of an omnipotent state, hiding in the depths of its computers all the data on citizens' everyday life, their habits and weaknesses. Such a state would allow its officials to use the personal data freely for their sinister purposes, blackmailing and enslaving the disobedient.

Poland's administration is subject every few years to the substantial organizational, functional and personnel reforms caused by political instability. Since the Second World War it has never had enough time to create good operating practice, acquire habits (good and bad) and routine, to train specialized professional personnel who feel secure in their posts. So it is not surprising that Poland has still a long way to go towards the centralized, omniscient, authoritative Leviathan-State.

Maybe it is even better this way? Probably this gives us the added advantage of learning from the experience of other countries, so that we will not repeat errors that others have made in the past.

The Chaotic System Today

In the autobiography of Lee Iacocca there is an excerpt where he speaks of his astonishment, when, after being assigned to Chrysler, he wanted to make a detailed analysis of the company's condition. It turned out then that not only did the relevant units have no necessary data, but also that there existed absolutely no system for data collection, storage and processing. So Iacocca was forced to have such a system created. The situation in Poland is similar. The data collection systems are chaotic and were created in a non-professional way; there is also no generally available information that they exist nor how to use them.

Political Aspects

In Poland, and similarly in other post-communist countries, the problems of data protection and public access to information remain under the strong influence of political emotions. They are mostly one-sided and connected with the problem of people formerly co-operating with the state security agencies, and include demands to make the archives of those agencies public. The Polish authorities announced that security agency files shall not be released, since they have been recognised as incomplete and unreliable. The possibilities for provocation and manipulation have also been noted. Nevertheless, some political factions still cling to the notion of releasing the data. The consciousness of these political aspects does not make any easier the peaceful and objective discussion on general data protection problems.

Current Legislation

Poland has no law concerning the protection of data stored in computers nor on computerization, data processing and privacy. Nevertheless, in Poland personal data is

collected on the population or selected groups and in an organized way. The legal basis for its collection, storage and usage is the *Population Registration Act of April 10 1974* which authorized specialized administration agencies at central and local levels, with supervision entrusted to the Minister of Internal Affairs.

To complete the legal framework there is a need to fill the gaps in the existing system of legal controls.

Legal Protection for Individuals

For many years Poland has had laws regulating decision-making procedure in individual cases. Poland has had an Ombudsman since 1988, and also, since 1980, courts to protect the rights of the individual citizen against illegal administrative activities. Poland is not one of the countries where citizens have no means of protection against illegal administrative activities. However, in practice, data protection issues have only rarely come before the Ombudsman or the courts.

Interest in controlling personal data

The first publication on computer control appeared in 1978, and there have been several works since then, both in legal journals and as books. Also the government is well aware of the existence of the *Council of Europe Data Protection Convention*. Poland's current administration is knowledgeable about the obligations it will bring upon itself when applying for membership of the Council of Europe, as well as the associated benefits.

Beginning the legislative process

In July 1991, discussion began on the need for and the scope of legal regulations. The main proposals were:

1. Automated data collection, storage and processing must be regulated by a separate law.
2. Data collection and use may be conducted only according to individually granted authorization which will be strictly controlled.

3. All data collected about an individual must be accessible and subject to the control of the individual to which the data relates.

4. All sensitive data, for example, relating to political preferences, religion, health, sexual life and criminal activity, may be collected only under conditions which ensure its confidentiality.

5. Data files may be used only for the purpose for which they were created.

6. There must be penalties for infringing the regulations of a future law, such as any collection, storage and processing of data in defiance of its provisions.

7. Supervision of this law may be entrusted to a new, specialized agency called The State Personal Data Protection Inspectorate. It would function under the authority of Parliament, and be able to take administrative decisions. Such decisions would also be subject to judicial review.

This document is only a preliminary paper, and it is difficult to say when work on the proposed law would be finished.

The Ombudsman's Privacy Case File

Cases on privacy are rare. Those that exist are presented in a publication *Right to Privacy and Data Protection - Remarks on the Activities of the Ombudsman*, by A. Mednis (Ombudsman Bulletin Material 6) published in Polish.

Medical data disclosed

Medical codes on doctors' certificates were disclosed on the basis that they were needed to justify the absence of children in a nursery school. The Ombudsman pointed out that this was the wrong use of such data, and the activity was abandoned. Interestingly, this was not done because there was any recognition of the Ombudsman's reservations, but in order to avoid his grumblings!

Irrelevant data suppressed

In several cases the Ombudsman has succeeded in changing the wording on standard

forms, for example, passport application forms, employee evaluation forms and similar cases, where he criticized unnecessary collection of data.

Use of data for an unrelated purpose by the Tax Office and the Police

He has also tackled a few cases of the granting of illegal access. One case was against the Tax Office administration who were surprised at the Ombudsman's intervention. Such an attitude is common among state officials, and is connected with a low level of consciousness about information sensitivity.

In another case, the police, acting without any legal basis whatsoever, obliged hotels to prepare daily lists of guests including detailed personal data, such as name, surname, birth date, parents' names and addresses. The lists were collected by the police each day, and this activity took place for nine years.

The explanation given by the police was that this activity was intended to make their job easier during a search for suspected persons. The problem was that these lists were falling into the hands of unauthorised people. Once it is thought that the end justifies the means, then non-constitutional activities are easily tolerated. The police considered their activities justified because there was no illegal intention.

Unfair obtaining of data

In 1990, the Ombudsman's attention was drawn to the fact that the General Population Registration System (begun in the 1970's) violates citizens' privacy because data from unknown sources was being inserted. The Ombudsman's research revealed this to be true, although the evaluation revealed that there was no danger. But this type of conflict requires more professional analysis than the Ombudsman can supply, and this is not available.

Identity cards

Another recent and as yet unfinished case concerns the Ministry of Internal Affairs and the information included in the coded personal number on each citizen's identity card. The main problem for the Ombudsman is insufficient professional knowledge needed for discussion on even terms with the database operators. In this field, his activities are directed to a breakthrough in the administration's poor information consciousness and to making it more sensitive to dangers caused by recklessness in personal data policy and/or practice. However, the situation up to now gives no grounds for optimism.

This is an edited version of the paper delivered by Professor Ewa Letowska, Poland's Ombudsman, at the Data Protection Commissioners' Annual Conference, in Strasbourg in October.