

NEW DATA PROTECTION BILL DRAFTED IN SPAIN

There are signs that a new data protection bill is being prepared by Spain's government, although details have not yet been published. A working group of both public and private sector experts has already met and one of its members, Dr Santiago Ripol, Lecturer in Public Law at Pompeu Fabra University, Barcelona, explains the steps taken since a right to privacy was included in the 1978 constitution.

When Spain surprised the international data protection community by ratifying the Council of Europe Convention in 1984, there was an assumption that it had either quietly enacted a data protection law or was about to do so. A bill had been prepared and Spain acted as host to a Council of Europe Conference June 11-13 that year where the bill was examined by a distinguished group of experts from abroad - and the bill was subsequently amended to reflect these comments and published the following year. Until now, there has been little visible progress on this comprehensive data protection bill but there has been some movement on sectoral measures, as Dr Ripol explains.

Privacy in the Constitution

The privacy debate began in Spain after the establishment of democracy in the 1970's. Spain, together with Switzerland and Portugal, was one of the first European countries to include a privacy provision in its constitution. It specifically included a provision on the misuse of computerized information.

Article 18 of the Spain's 1978 Constitution states:

" 1. The right to one's reputation, to the privacy of the individual and the family, and to one's own image is guaranteed."....

" 4. The law shall restrict the use of computerized information to guarantee the

reputation and personal and family privacy of citizens and the full exercise of their rights."

The placing of this article in the Constitution (in the first section of Chapter II, Title I) is most significant as this gives it maximum juridical authority in the Spanish legal system. These rights are subject to direct jurisdiction by the courts, appeal to the Constitutional Court (which has referred to privacy rights in its decisions on several occasions) and the protection of the Ombudsman.

Article 105 b) of the Constitution also refers to the use of personal information, although in an indirect way:

"The law shall regulate access by citizens to administrative files and registries as long as it does not endanger the security and defence of the State, the investigation of crime and individuals' right to privacy."

Spain ratifies the Council of Europe Convention

Spain's clearly demonstrated its intention to introduce legislation on January 31st 1984 when it ratified the Council of Europe Convention on Data Protection. The requirements of the Convention gave added impetus for Parliament to enact a law regarding the protection of personal data as specified in and required by the Constitution.

A Green Paper on "the regulation of the use of computerized information to protect private data" was published on the 10th December 1985. No further steps have been taken by the government on this draft bill since that date.

Unsuccessful attempts at data protection legislation

Some opposition political parties have been impatient with the government's slow progress in this area. Three proposals have been placed before Parliament for a non-binding Declaration by different political factions: the Popular Group (1985), the Parliamentary Mixed Group - *Euskadiko Eskerra* - (1986) and the Catalan Minority (1988). None of these were adopted.

Two further proposals for the enactment of an organic law on data protection have been submitted. They were:

- the protection of the reputation and privacy of the individual from the misuse of a data bank (Popular Group - April 27, 1987) and
- the protection of the rights and freedom of the individual in connection with computerized information and telecommunications (Parliamentary Mixed Group - *Agrupacion Izquierda Unida - Esquerra Catalana* - June 23, 1988).

Both of these proposals were rejected by Parliament - on April 12th 1988 and April 11th 1989 respectively.

Sectoral data protection legislation

It might seem that without the benefit of comprehensive data protection legislation to regulate the use of all public and private sector data, individuals in Spain are defenceless and their privacy is threatened by those who own or manage name-linked data. However, the situation is not so extreme.

Despite these unsuccessful attempts by the opposition parties to introduce data protection legislation, a number of important statutory measures have been taken in Spain since 1984 which go some of the way to meet the obligations imposed by the Constitution and the Council of Europe Convention. Manuel Heredero, the senior civil servant who has guided Spain's data protection policy for several years, has identified two major categories among the following most important examples of this legislation.

- Laws that relate to the collection of personal data:
 1. Measures for The Reform of Public Administration (Article 13.5 of law 30/1984) the General Tax Law (Article 111, as modified by law 10/1985)
 2. Civil Protection (Article 19.2 of the law 2/1985)
 3. Credit Institutions (Article 5 of the law 26/1988).

- Laws that relate to the use of personal data:

1. Measures for the Reform of the Public Administration (Article 61 of the law 30/1984)
2. General Tax Law (Article 111)
3. Auditing of Accounts (Article 13 of the law 19/1988), and
4. In-Vitro Fertilization (Article 19.3 of the law 35/1988).

In addition to these laws which refer to data protection rights in a broader context, two laws deal with them in a clear and unambiguous way:

1. A law on the preparation of statistics as a public duty (law 12 of May 9, 1989); and
2. A law on the civil protection of the right to one's reputation, personal privacy and own image (organic law 1 of May 5, 1982)

The Minister for Contact with Parliament was asked about the existence of a legal provision for the protection of individuals to enable them to verify computerized data on them in order to amend or delete the data. He explained in a written answer, on April 21 1988, the government's position that "the citizen is not defenceless or lacking in legal protection in these matters As the [general data protection] law envisaged in the Constitution has not yet been enacted, protection from any possible interference deriving from the misuse of computerized information should be guaranteed by [the above privacy] legislation. On tax matters, a regulation of July 30 1982 restricts access and use of information contained in tax data banks."

Need for stronger data protection legislation in Spain

This review of the legislation identifies several weaknesses in Spain's data protection legislation.

- The protection of an individual's right to privacy, reputation and private and family life, as envisaged in the 1982 organic law,

is more restrictive than the data protection rights and references to privacy in the Council of Europe Convention

- The difficulty of regulating an issue when the legal provisions are placed in different laws and are therefore difficult to find.
- The inadequacy of the regulations adopted so far by Spain to provide for compensation for damages to individuals. This is because, in general, they deal only with the collection or use of personal data. They do not cover other aspects of

data protection in the Council of Europe Convention, such as data security or international data transfers.

Dr. Santiago Ripol is a lecturer in Public International Law at the Pompeu Fabra University Barcelona. He has undertaken a comprehensive review of data protection law in Spain and a version of this report with supporting footnotes is available from the *Privacy Laws & Business* office on request.