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Activity 2.2
Analysis of current practise of the DSI
regarding the management of claims and complaints

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Preliminary remark

To examine the structure and practise of management of claims and complaints the annual report of the Data State Inspection (in the following DSI) from 2002 has been evaluated. Additional two employees of the control Division at DSI Mrs. Elina Movele who is senior inspector control division and Mrs. Aiga Balode who is head of information exchange management and administrative procedure division have been interviewed. They described the practise of handling claims and complaints at present. Also the reports of STE Andreas Schneider and STE Peter Paul Klein have been analysed.

Rights and duties of the State Data Inspection

The DSI has different rights and duties prescribed by Personal Data Protection Law of Latvia. In particular section 29 paragraph 3 of the Law describes the duties of the DSI as follows:

- 1) to ensure compliance of personal data processing in the State with the requirements of this Law;
- 2) to take decisions and review complaints regarding the protection of personal data;
- 3) to register personal data processing systems;
- 4) to propose and carry out activities aimed at raising the efficiency of personal data protection and submit reports on compliance of personal data processing systems created by government and local government institutions with requirements of regulatory enactments;
- 5) together with the Office of the Director General of the State Archives of Latvia, to decide on the transfer of personal data processing systems to the State archives for preservation thereof
- 6) accredit persons wishing to perform system auditing of personal data processing systems of government and local government institutions in accordance with procedure established by the Cabinet of Ministers.

The rights of the DSI particularly are described in section 29 paragraph 4 of the Personal Data Protection Law as follows;

- 1) in accordance with the procedures prescribed by regulatory enactments, to receive, free of charge, information from natural persons and legal persons as is necessary for the performance of functions pertaining to inspection;
- 2) to perform inspection of a personal data processing system;
- 3) to require that data be blocked, that incorrect or unlawfully obtained data be erased or destroyed, or to order a permanent or temporary prohibition of data processing; and
- 4) to bring an action in court for violations of this Law;
- 5) cancel a certificate of personal data processing registration if violations were established when inspecting the personal data processing system;
- 6) impose administrative punishments for violations in personal data processing in accordance with procedure provided by the law;
- 7) carry out inspection with the purpose to determine compliance of personal data processing with requirements of regulatory enactments in cases when the law bars the system controller from information delivery to the data subject and the corresponding application was received from the data subject.

An important task of the DSI is to register personal data processing systems in accordance with Chapter IV of the Personal Data Protection Law of Latvia. According to section 21 paragraph 1 of the Law all State and local government institutions, and other natural persons and legal persons who carry out or wish to commence carrying out personal data processing, and establish systems for personal data processing, shall register such in accordance with the procedures prescribed in this Law unless otherwise prescribed by law. The registration procedure is particularly described in section 22 of the Personal Data Protection Law.

Another important task of the DSI is to take decisions and review complaints regarding the protection of personal data (see Section 29). In the following it will be pointed out in which way DSI is handling complaints at present. This practise will be analysed.

Analysis of the current practise of handling complaints and claims by the DSI

In the annual report of DSI from 2002 there are described some cases regarding claims and complaints which have been handled by the DSI.

In our interview the DSI first of all told us about the structure of the control division. There are six employees altogether at the control division. They are dealing with complaints. Five employees of the division are lawyers, resp. law students. One employee is a technician. If there are cases that affect technical aspects the technician is included in the work of the lawyers. Internal regulations about the handling of complaints at present do not exist. But to ensure that similar cases are answered in a similar matter all complaints are submitted to the head of division.

At present the DSI is particularly concerned with two different kinds of complaints. On the one hand there are complaints that are based on the Administrative Procedure Law. On the other hand there are complaints dealing with general questions. These complaints are based on the *lesniegumu, sudzibu un priekslikumumu izskatsanas kariba vassts un pasvaldibu institucijas* (annotation: English version of this Law was not available) that contains regulations about handling of complaints and in particular it contains time periods for answering these complaints.

The procedures of handling of complaints and claims are in detail described by the Administrative Procedure Law that has been established in 12 June 2003 and 19 January 2004. According to Section 3 paragraph 1 this Law shall be applied to administrative procedure in institutions to the extent that special norms of law in other laws do not provide otherwise. The DSI told us that claims and complaints have to be handled based on this Law.

If there is a complaint the potential violator has to be requested for a statement about the facts of the case. The employees have to be authorised by the director of the DSI to request the statement. Then the employees have to write a record about the facts of the case. After that the violator has to sign this. If he denies signing the record the employees of the DSI have to make a note and also furthermore have to inspect the facts of the case. After that a meeting has to be arranged by the deputy director who also is head of the control division. An employee is participating in this meeting. The submitter and also the addressee are allowed to participate in this meeting. The DSI told us that in practise they often participate in the meeting. After the meeting the DSI decide if the addressee should be admonished or fined. The decision of the DSI is an

administrative decision that could be appealed to a court (see Section 31 of the Personal Data Protection Law). The decision has to be made by the head of division who also is the deputy director of the DSI. On request of the submitter the DSI could notice the administrative decision to him. If there have been requested statements of third parties they also get the administrative decision.

The DSI told us that it is also possible to pronounce a verbal admonition in cases of marginal infringements of data processing. But in cases of violations regarding sensitive data according to the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement normally it is not possible to abstain from obtaining a fine.

In Latvia the procedure is equal whether the addressee of the administrative decision is a private or a public body. The DSI told us that casually it could be difficult to find out if there is a responsibility of a legal person or a private person for the data processing.

Apart from the Administrative Procedure Law there is the Latvia Administrative Violations Code that has been enacted first of all in 1984 and has been changed several times until now. Articles 204.⁷ to 204.¹¹ of the Law contain regulations about fines that could be imposed by the DSI. The Law contains regulations about different cases. These are as follows: unlawful processing of personal data, failure to inform the data subject, operating a data processing system without registration, failure to provide information of the National Data Inspectorate and the failure to accredit a person with the National Data Inspectorate.

If there is an infringement of data protection law detected it is possible to admonish or to fine the physical or legal person. It has to be established that the fines that could be imposed in regular are low. E.g. it is possible to fine physical persons for the unlawful processing of personal data between five and twenty-five lats and legal persons between one hundred and one thousand lats. The admonishment or fine may or may not be supplemented by confiscation of the means of violation. E.g. it is also possible to impose a fine between twenty-five lats and two hundred and fifty lats for operating a personal data processing system without registering it with the Data State Inspection.

Regarding the handling of claims and complaints there is a main difference between German Data Protection Law and Latvian Data Protection Law. In Germany the Law contains different regulations about data processing in the private sector and data processing in the public sector.

If there is established an infringement of German Data Protection Law by a private body there is a possibility to punish the administrative offences by a fine of up to 25.000 Euro in cases defined in Section 43 paragraph 1 of the Federal Data Protection Act. E.g. this could be cases in which somebody fails to submit a notification or fails to submit a data protection official. Administrative offences shall be punishable in cases defined in Section 43 paragraph 2 of the Federal Data Protection Act by a fine of up to 250.000 Euro. E.g. an administrative offence shall be deemed to have been committed by anyone who, whether intentionally or through negligence, collects or processes personal data which are not generally accessible without authorisation or holds personal data which are not generally accessible ready for retrieval by means of an automated procedure without authorisation. The supervisory authorities impose the fine.

Additional the Federal Data Protection Act in Section 44 provides criminal offences if anyone wilfully commits an offence specified in Section 43 paragraph 2 of the Act in exchange of payment or with the intention of enriching himself or another person or of harming another person. The Section provides that the person shall be liable to imprisonment for up to two years or to a fine. According to paragraph 2 of this Section such offences shall be prosecuted only if a complaint is filed. Complaints may be filed by the data subject, the Federal Commissioner of Data Protection and the supervisory authority.

In difference to the described legal status for violations of Data Protection Law by private bodies in Germany it is not possible to impose a fine to public bodies. If a Data Protection Commissioner detects infringements of Data Protection Law he shall lodge a complaint and shall request a statement of the public body. But he is not allowed to impose a fine. The Data Protection Commissioner could request the public body to rectify founded irregularities. This instrument is similar to the admonishment that is described in the Latvia Administrative Violations Code. But there is another main

difference between the Latvian and the German Law because in Germany it is not possible to appeal the decisions of the German Data Protection Commissioners to a court.

As a result it can be established that in Latvia the DSI has instruments to enforce their measures independent of the fact if the violator is a public or a private body. On the one hand it is an effective instrument to impose fines to public or private bodies that violate Data Protection Law. But on the other hand in the experts' opinion it is problematic that the fines that could be imposed are very low. So first of all it should be reconsidered to amend the Latvia Administrative Violations Code. The level of the possible fines should be higher. Higher fines in the experts' opinion would act as a deterrent for the data processing bodies. So the expert thinks higher fines could help to avoid infringement of Data Protection Law. Following the regulations of the German Federal Data Protection Act it could be useful to differentiate between more formally and substantial infringements. If the infringements are more formally there should be a lower fine but if there is a hard violation of Data Protection Law it should be possible to impose a higher fine. The regulations of the German Federal Data Protection Act could be an example for an amendment of the Latvia Administrative Violations Code regarding the fines for infringements of Data Protection Law. In particular private bodies that have high sales should be prevented from unlawful processing of personal data by threatening them with higher fines.

In the experts' opinion it is difficult to facilitate compliance with Data Protection Law by imposing fines. First of all it should be an important aim to prevent infringements before imposing fines. It would also be better to admonish the addressees of the administrative decision before imposing a fine.

As aforementioned in Latvia the procedure of handling complaints is regulated in the Administrative Procedure Law. Because of that it would be difficult to make decisive modifications in the daily work of handling complaints and the expert also thinks that the procedures of handling complaints by the DSI are quite good at present. The legal rules for handling complaints are advantageous because it is possible to find out in which way each complaint has to be handled. But the experts' opinion it would be helpful to find possibilities not to handle each single case under a uniform procedure. There would be

cases regarding problems that could be solved without any administrative decision. In fact it could be a good way if the parties try to find an answer to the problem in a meeting that could be arranged by the DSI before the protocol that is prescribed by Administrative Procedure Law has been written. Possibly the violator promises to stop infringements of Data Protection Law so that it would not be necessary to make any administrative decision.

The employees told us that at present there is no specialisation of the employees according to the different branches of data protection law. But in the future the employees should be more specialised.

On the one hand it is very difficult to specialise the employees because there are only six employees at all working with claims and complaints at the control division at present. But on the other hand it would be helpful to specialise the employees to arrange the daily work more effectively. In the experts' opinion it could make sense to differentiate between complaints regarding private bodies and complaints regarding public bodies. The specialisation is not so deep so that it would be possible to realise although there are only six employees at all at the control division. Because of the different interior structures of public and private bodies also the data processing could be different. The expert also thinks the complaints regarding these different bodies are different. Because often the complaints could concern similar facts it would be very effective if the same employee could be engaged in each case that is similar to other cases the DSI has been engaged in. E.g. this could be a complaint regarding patients' data or a complaint regarding data processing in the financial sector.

So the plan of the DSI to specialise the employees in the future is a very good idea that could help to make the daily work more effective.

The DSI has an Internet website <http://www.dvi.gov.it>. At present the publicly available part of information on personal data processing systems registered with the DSI there is available. Also information about laws and other regulations are available. It could be a possibility to make more information on the Internet website available. E.g. there could be a column which contains frequently asked questions so that some complaints of citizens could already be answered by referring them to the information on the website.

Also there could be distributed leaflets that contain information about recurring topics. E.g. this could be information about prevention against unsolicited advertising. This information could also help to facilitate the daily work of the DSI.

Results

The practise of the DSI in handling complaints at present is quite good. Because of the regulations of the Administrative Procedure Law it is not so easy to make modifications of the procedure for handling complaints. Besides it is not necessary to change this practise because it makes sense to handle complaints in the way it is described by Law. But as aforementioned it would be helpful not to handle each single case in a uniform procedure. Because in general there are meetings DSI, the addressee and casual also the submitter takes part in it should be tried to find solutions without releasing administrative decisions to the addressee if this is possible in the singular case.