

Macedonia: Privacy Developments in 2008

Report by Metamorphosis Foundation for EDRI

Even though the Constitution of the Republic of Macedonia and the Law on Personal Data Protection (LPDP), the Criminal Code, Law on Organization and Operation of State Administrative Bodies and other laws recognize and protect the rights of privacy, data protection and secrecy of communications, the implementation of these protections has met with major difficulties during 2008.

A small number of Macedonian NGOs cover the issue of privacy, and during 2008 their main concerns involved the protection of human rights of children on the Internet—including the privacy of children—and the protection of privacy by the police and law enforcement agencies.

LPDP was adopted on January 25, 2005 and is in concord with the Council of Europe (CoE) Convention No. 108. In July 2008, the Parliament ratified the Additional Protocol of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and trans-border data flow. This document was signed on January 4, 2008. In July 2008, the Parliament also enacted the Law that amends the LPDP. Both pieces of legislation (the Additional Protocol and the amendments) came into force on August 19, 2008.

The Law of amendments and modifications of the LPDP is aimed at:

- Full harmonization of the national legislation with the legislation of the European Union, more precisely with Directive 95/46/EC of the European Parliament and the Council of the European Union;
- Full harmonization of the national legislation with the Additional Protocol to the CoE Convention 108/81;
- Expansion of the definition of “special categories of personal data” by adding philosophical beliefs, genetic data and biometric data;
- Full application of the Law to public security and criminal proceedings, as well as limited application to national security and defense;
- Partial exclusion of the application of the Law, when necessary for the purposes of professional journalism and artistic expression;
- Regulating video surveillance;
- Simplification of the notification procedure and complaints handling procedure;
- Regulating in greater detail the manner of performing inspections and increasing the competencies and enhancing the status of the inspectors;

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- Harmonization of the Law on Personal Data Protection with the Law on Misdemeanors and strengthening the independence of the Directorate for Personal Data Protection.

Illegal invasion of the privacy of communications is prohibited and punishable. In accordance with the Law on Electronic Communications, which provides privacy protection with prohibition of unauthorized wiretapping and data retention, lawful wiretapping, and prohibition of unrequested communication including telemarketing and spamming in compliance with EU standards (opt-in for inclusion in mailing lists, and the right to opt-out for users of existing mailing lists). The changes in the Law on Personal Data Protection also tackle the issues of unwanted direct marketing, with fees of 500 Euros if the offender is an individual citizen, 2000 Euros for legal entities plus 700 Euros for the responsible executive.

A public panel on privacy in Macedonia held on August 26, 2008, as part of a public consultation to elaborate the Macedonia Report for Privacy and Human Rights Report 2008, reiterated the assertions from the previous year that there has been no public knowledge about cases of implementation of privacy protection provisions of the Law on Electronic Communications, and spamming remains widespread practice in the Macedonian business sector. Moreover, at least one company continues to provide spamming services for other companies, and the number of Macedonian legal entities who have a privacy policy, (if any) remains insignificant.

Even though wiretapping is regulated and unauthorized wiretapping is prohibited, the wiretapping cases initiated in the past have not reached closure in court. The most notable example is the process against the state initiated by 17 journalists who have been subject to surveillance in the "Big Ear" affair of 2001. Over seven years, four different judges have unsuccessfully presided over this trial, and it was finally resolved at a retrial in June 2007. The state was found guilty, but the 17 plaintiffs stated that they remain dissatisfied with the compensation and the whole process. Their representatives stated that they won't discontinue the trial already underway at the European Court of Human Rights in Strasbourg, based on their complaint. In September 2008, the Appellate court confirmed the verdict of the basic court, but lowered the damages from the initial 6.000 Euros to approximately 4.000 Euros per journalist. The journalists have stated that "they are not satisfied with the compensation, and the precedent sets a signal that the violation of human rights is cheap in Macedonia."

The Criminal Procedure Code (CPC) established special investigation measures. These measures ensure the gathering of evidence required for a successful

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criminal prosecution. These measures apply only when the evidence cannot be obtained in another manner or evidence-gathering is related to serious organized crimes. After the Parliamentary elections of June 2008, the "technical Government" proposed and the new Parliament adopted fast-track changes and amendments to over 164 laws in July and 17 laws in the following month, including the Law on Communication Interception (LCI) which is the *lex specialis* in respect to the CPC and the application of special investigative measures (surveillance).

Prominent NGOs: Foundation Open Society Institute – Macedonia, Association for Criminal Justice and Criminology of Macedonia and Helsinki Committee for Human Rights of the Republic of Macedonia expressed deep concern because of the fast-track adoption of changes in the legislation "without no expert discussion whatsoever." These changes can turn Macedonia from a state based on a rule of law into a "police state unconcerned with respect of basic human rights and freedoms."

Subsequent expert analysis of the new legislation indicated that: "Besides enlarging the possibility for implementation of special investigative procedures for crimes outside of the sphere of organized crime, these changes also allow wide preventive implementation of these measures, even in cases without reasonable doubt of hard crimes and corruption. These changes are not in line with the European and world human rights standards, nor are common as acceptable method for fighting crime and corruption."

The LCI also envisages the establishment of a Parliamentary Committee for the supervision of the application of communication interception techniques by the Ministry of the Interior and the Ministry of Defense. This Committee has been established *de facto* at the Parliament of the Republic of Macedonia, but it was denied access to state-owned data and has not issued any reports during 2008.

As part of its priority of raising public awareness the Directorate for Personal Data Protection of RM (in cooperation with the Metamorphosis Foundation) implemented the Norwegian model on raising public awareness for youngsters, through creation of educational content and conducting public events in schools.

EDRI-member Metamorphosis Foundation implemented the Children's Rights on the Internet – Safe and Protected (CRISP) project, co-funded by the European Initiative for Democracy and Human Rights (EIDHR) and Metamorphosis. It included establishment of a network of twelve NGOs working on the promotion and safeguarding of children's rights online within their communities in cooperation with the Directorate for Personal Data Protection of the Republic of

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Macedonia. The CRISP activities included developing a curriculum and educational resources in Macedonian and Albanian, available both off line and online, and conducting trainings. The trainings covered 50 primary and 20 secondary schools with participation of 8,482 children, 1,138 parents and 1,170 teachers from 12 cities and 7 villages from Macedonia.

Metamorphosis Foundation also provided opportunities for raising awareness of opinion and decision makers, for instance, by including data protection sessions within the 2008 agenda of the Fourth International Conference e-Society.mk focused on ICT in Education.

In order to raise the public awareness also, Metamorphosis also formed an ad-hoc coalition of NGOs and other institutions to celebrate the Freedom Not Fear Day in Macedonia. FNF coincided with the public holiday of 11 October – the Day of uprising against fascism in World War II, and involved organizing public debate at the faculty of law and distribution of information on video surveillance on university campuses and the centre of Skopje, including an infostand and public survey. Several thousands of people were reached by these activities, and most citizens expressed concerns about various ways of "spying" conducted by the Government, corporations and individuals which threaten their privacy.

Legal experts and human rights activists have raised concerns about the extensive use of detention and violation of privacy and the presumption of innocence. The Macedonian Helsinki Committee and the Human Rights Project—a network of 5 local NGOs working with alleged victims of police abuse—continuously condemned spectacular arrests by the police, which included inviting the media to film the handcuffed suspects escorted by law enforcement officers. In order to raise public awareness and condemn concrete violations and spectacular arrests, nine media events were organized. As a result, TV Telma, one of then six television stations with license for national coverage, adopted a policy to no longer broadcast any arrests and police-escorted transports.

Reacting to recent changes in the legislation the Helsinki Committee also organized public debate on the reasonable expectations in regard to privacy protection versus efficiency in the fight against crime and corruption in a state of laws on 25 November 2005. However, the representatives of the state failed to appear at the debate and provide arguments that would alleviate the concerns raised by the representatives of the civil and academic sector.

Links

Directorate for Personal Data Protection of the Republic of Macedonia
<http://www.dzlp.mk>

Metamorphosis Foundation
<http://www.metamorphosis.org.mk>

Children's Rights on the Internet – Safe and Protected (CRISP) project
<http://www.metamorphosis.org.mk/crisp>

Safe on the Internet – resources for children, parents and teachers in Macedonian and Albanian language
<http://www.crisp.org.mk>

Human Rights Support Project
<http://www.hrsp.org.mk>

Helsinki Committee for Human Rights of the Republic of Macedonia
<http://www.mhc.org.mk>

International Conference e-Society.mk
<http://www.e-society.mk>

Articles

Macedonia: Public outcry over new legislation for preventive surveillance
<http://www.metamorphosis.org.mk/content/view/1198/4/lang,en/>

Freedom Not Fear in Macedonia, 10-11 October 2008
http://wiki.vorratsdatenspeicherung.de/Freedom_Not_Fear_2008/Skopje

Debate on Privacy in Macedonia, 26 August 2008
<http://www.metamorphosis.org.mk/content/view/1250/3/lang,en/>

Апелациониот суд потврди: Новинарите од Големото Уво биле прислушувани“ (in Macedonian “Appellate court confirms: The Big Ear Journalists were wiretapped”) Večer, September 2, 2008
<http://www.vecer.com.mk/?ItemID=C50F895AE5A071478301A8CF24F47A51>