

Romania**I. PRIVACY AND DATA PROTECTION NORMATIVE AND INSTITUTIONAL FRAMEWORK*

CONSTITUTIONAL PRIVACY AND DATA PROTECTION FRAMEWORK

The Romanian Constitution¹ adopted in 1991 recognises under Title II (Fundamental Rights, Freedoms, and Duties) the rights of privacy, inviolability of domicile, and freedom of conscience and expression. Article 26 of the Constitution states, "(1) Public authorities shall respect and protect the intimate, family and private life. (2) Any natural person has the right to freely dispose of himself unless by this he causes an infringement upon the rights and freedoms of others, on public order or morals." Article 27 states, "(1) The domicile and the residence are inviolable. No one may enter or remain in the domicile or residence of a person without consent. (2) Derogation from provisions under paragraph (1) is permissible by law, in the following circumstances: for carrying into execution a warrant for arrest or a court sentence; to remove any danger against the life, physical integrity, or assets of a person; to defend national security or public order; to prevent the spread of an epidemic. (3) Searches may be ordered only by a magistrate and carried out exclusively under observance of the legal procedure. (4) Searches at night time shall be prohibited, except in cases of *flagrante delicto*." Article 28 states, "Secrecy of the letters, telegrams, and other postal communications, of telephone conversations, and of any other legal means of communication is inviolable." According to Article 30, "(6) Freedom of expression shall not be prejudicial to the dignity, honour, privacy of person, and the right to one's own image."

The Romanian Constitutional Court had two important decisions taken in 2009 and 2010 regarding the interpretation of the right to privacy, as enshrined by the Constitution. The first is Decision No. 1258 of 8 October 2009² that considered

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1 Available in English at <http://www.cdep.ro/pls/dic/act_show?ida=1&idl=2&tit=2#t2c2s0a26>.

2 Curtea Constitutională a României, [Decision No. 1258 of 8 October 2009 on the objection of unconstitutionality of the provisions of Law No. 298/2008 on the retention of data generated or processed by the providers of publicly available electronic communications services or public communications networks, which also amends Law No. 506/2004 on the processing of personal data and privacy protection in the electronic communications sector, Official Monitor No. 798, 23 November 2009](#) Decision No. 1258 of 8 October 2009 on the objection of unconstitutionality of the provisions of Law No. 298/2008 on the retention of data generated or processed by the providers of publicly available electronic communications services or public communications networks, which also amends Law No. 506/2004 on the processing of personal data and privacy protection in the electronic communications sector, Official Monitor No. 798, 23 November, 2009, available in Romanian at

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unconstitutional the national implementation of the Data Retention Directive.³

The second decision is the Constitutional Court ruling 415 of 14 April 2010⁴ regarding the unconstitutionality of the law establishing the National Agency of Integrity⁵ that obliged all the interest and income declarations of certain public servants to be published on the Internet. In this case, the Court considered that "the obligation stipulated by the law to publish the declarations of assets and interests on the Web pages of the entities where the persons, according to the legal provisions, have to submit them, as well as their transmission to the Agency to be published on its Web site, breach the right to respect and protection of private life ensured by Article 26 of the Fundamental Law as well as by article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, by the unjustified exposure, in an objective and sensible way, on the Internet page, of the data related to the assets and interests of people who, according to the law, have the obligation to submit declarations of assets and interests."

PRIVACY AND DATA PROTECTION LAWS AND REGULATIONS

Comprehensive law

In November 2001, the Parliament enacted Law No. 676/2001 on the Processing of Personal Data and the Protection of Privacy in the Telecommunications Sector⁶ and Law No. 677/2001 for the Protection of Persons concerning the Processing of Personal Data and the Free Circulation of Such Data.⁷ These laws follow very closely the European Union Telecommunications Privacy (1997/66/EC) and Data Protection (1995/46/EC) Directives respectively. Romania joined the European Union on 1 January 2007.⁸

<http://www.ccr.ro/decisions/pdf/ro/2009/D1258_09.pdf>., An unofficial English translation of the Decision is available at <http://www.legi-internet.ro/fileadmin/editor_folder/pdf/decision-constitutional-court-romania-data-retention.pdf>. The content of Decision 1258 is discussed *infra* in the text.

3 Law No. 298/2008 regarding the Retention of the Data Generated or Processed by the Public Electronic Communications Service Providers or Public Network Providers, as well as the modification of Law No. 506/2004 regarding the Personal Data Processing and Protection of Private Life in the Field of Electronic Communication Area, published in the Official Monitor No. 780, 21 November 2008, available in Romanian at <<http://www.legi-internet.ro/legislatie-itc/date-cu-caracter-personal/legea-2982008-privind-pastrarea-datelor-de-traffic-informational.html>>.

4 Official Monitor No. 294, 5 May 2010, Decision available in Romanian at <<http://www.legestart.ro/Decizia-415-2010-referitoare-exceptia-neconstitutionalitate-dispozitiilor-cap-I-Dispozitii-generale-art-1-9-ale-art-11-lit-e-f-g-ale-art-12-alin-2-ale-art-13-ale-art-1-%28MzUyMjMw%29.htm>>.

5 Law No. 144/2007 for setting-up, organizing, and functioning of National Agency for Integrity - Official Monitor No. 359, 25 May 2007, text available in Romanian at <http://www.dreptonline.ro/legislatie/lege_agentie_nationala_integritate_144_2007.php>.

6 Official Monitor No. 800, 14 December 2001, available at <<http://www.riti-internews.ro/lg676.htm>>.

7 Official Monitor No. 790, 12 December 2001, available at <<http://www.avp.ro/leg677en.html>>.

8 See <http://europa.eu/abc/european_countries/eu_members/romania/index_en.htm>.

Law No. 676/2001 provides for specific conditions under which privacy is protected with respect to the processing of personal data in the telecommunications sector. In 2004, Law No. 676/2001 was, practically speaking, replaced by Law No. 506/2004⁹, which closely follows Directive 2002/58/EC of the European Parliament and the Council on personal data processing and privacy protection in the electronic communications sector. This directive repealed and replaced Directive 1997/66/EC.¹⁰

Law No. 506/2004 divides the task of enforcing the personal data protection laws between two institutions: the National Regulatory Authority for Communication (later renamed the National Authority for Management and Regulations in Communications – Romania, or ANCOM¹¹) for issues related to electronic communications and the People's Advocate Office (later renamed the Data Protection Authority, or ANSPDCP), which handles issues related to privacy. In this sense, ANCOM has competence in relation to: security measures for electronic communication; non-compliance with invoice issuing conditions; infringement of the obligations regarding the presentation and restriction of calling; and connected line identification.

Law No. 677/2001 applies to the processing of personal data, that is carried out totally or partially through automatic means, as well as to the processing of personal data through other means that are part of, or destined for, an evidence system.

A new civil code was approved in July 2010 by the Romanian Parliament.¹² The Code has not come into force, and it is unclear when this will happen – the Parliament needs to issue a new law to establish it. The code's new text includes provisions relating to private life and a series of articles stating the respect to private life, the right to dignity, the interdiction against public use of images, voice recordings, manuscripts, correspondence, or other personal documents without the owner's consent (except in cases where the use is legally allowed by the law because the material is of justified public interest). The new text also defines that a breach of someone's private life (Article 74 – "Breaches of private life") includes: capturing or using a person's image or voice in a private space without the person's consent; broadcasting images representing private space interiors without the consent of the legal occupant; placing private life under observation by any means, except for the express cases provided by the law; broadcasting news, debates, inquiries, or written and audio-visual coverage of a person's private, personal or family life, without the

⁹ Law No. 506/2004, Official Monitor No. 1101, 25 November 2004, Romanian text available at <<http://www.legi-internet.ro/legislatie-itc/date-cu-caracter-personal/legea-privind-prelucrarea-datelor-cu-caracter-personal-si-protectia-vietii-private-in-sectorul-comunicatiilor-electronice.html>>. An English summary is available at <<http://www.glin.gov/view.action?glinID=119653>>.

¹⁰ Directive 2002/58/EC, Official Journal of the European Community L. 201, 31 July 2002.

¹¹ See <<http://ancom.org.ro/index.aspx>>.

¹² Official Monitor No. 511, 24 July 2009, text available in Romanian at <http://www.avocatnet.ro/content/articles/id_16209/Noul-Cod-civil-2009-publicat-in-Monitorul-Oficial-Text-integral.html>.

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person's consent; broadcasting materials including images of a person under treatment in medical assistance units as well as personal data related to health, diagnosis, prognosis, treatment, or other circumstances and facts related to the disease including autopsy results, without the consent of the person involved or, in case of the person's death, of that of his family or authorised persons; using, with malice, the name, image, voice, or likeness of another person; broadcasting or using correspondence, manuscripts, or other personal documents including data relating to the domicile, residence, or phone numbers of a person or his (her) family members, without the person's consent.¹³

Some of these provisions were criticised by several mass-media organisations¹⁴ as limiting freedom of expression, especially where there is a public interest for a specific case. The government's reply was to present a proposal in 2009 to add another, rather vague article to the draft. This would make all the above-mentioned privacy provisions concerning inapplicable if interfering with the right were "allowed by the law or international conventions and agreements regarding human rights to which Romania is part." It also says: "Exercising the constitutional rights and freedoms in good faith and by observing the international conventions and agreements Romania is part of, is not an infringement of the rights provided for by this section".

The civil code has not yet come into force. It may enter into force on 1 October 2011 if the law establishing this date, as suggested by the Ministry of Justice, is adopted by Parliament.¹⁵

Sector-based laws

In 2002, the National Audiovisual Council¹⁶ issued regulations regarding privacy and television and radio programs in Decision No. 80 of 13 August 2002, Regarding the Protection of Human Dignity and the Right to Protect One's Own Image. These established a few privacy principles. Article 6 states, "(1) Any person has a right to privacy, privacy of his family, his residence and correspondence. (2) The

13 See Bogdan Manolea, Privacy in the New Draft Civil Code, 18 March 2009, at <<http://legi-internet.ro/blogs/index.php/2009/03/18/viata-privata-in-noul-proiect-de-cod-civ>>.

14 See Activewatch, Libertatea Presei în România 2009 (2009 Freedom of Press in Romania) Annual report,, 3 May 2010 available at <<http://www.activewatch.ro/uploads/FreeEx%20Publicatii%20Raport%20Freeex%20%203%20mai%202010.pdf>>; Annual report Hotnews.ro, "UPDATE: CJI, AMP, COM, CRP, AJR si MediaSind protesteaza fata de prevederile noului Cod Civil referitoare la presa: Guvernul dovedeste 'opacitate' si comite 'abuzuri'" ("UPDATE CJI, AMP, COM, CRP, AJR and MediaSind are protesting against the provisions of the new civil code: The Government proves to be 'opaque' and makes 'abuses.'"), 16 March 2009, available at <http://economie.hotnews.ro/stiri-media_publicitate-5496874-update-cji-amp-com-crp-ajr-mediasind-protesteaza-fata-prevederile-noului-cod-civil-referitoare-presa-guvernul-dovedeste-opacitate-comite-abuzuri.htm>.

15 Draft laws from the Ministry of Justice available at Hotnews.ro's website, at <<http://www.hotnews.ro/stiri-esential-7543964-predoiu-noul-cod-civil-noul-cod-penal-vor-intra-vigoare-1-octombrie-2011.htm>>.

16 See <<http://www.cna.ro/-English-.html>>.

broadcasting of news, debates, inquiries, or audio-visual reports on a person's private and family life is prohibited without that person's approval." According to Article 7, "It is forbidden to broadcast images of a person in his or her own home or any other private place without that person's approval; (2) It is forbidden to broadcast images of a private property, filmed from the inside, without its owner's approval."¹⁷

In 2009 the Parliament adopted a new Penal code¹⁸ that includes a new crime called "Breaching privacy". Article 226 states: "(1) The harm unlawfully brought to private life by photographing, capturing, or recording images, listening in by technical means or audio recording a person within a home, a room, or an out-building related to it, or a private conversation, is punished with imprisonment from six months to a year or a fine. (2) Revealing, broadcasting, presenting, or transmitting unlawfully the sounds, conversations, or images covered by paragraph (1), to another person or to the public, is punished with imprisonment from three months to two years or a fine. (3) The criminal case starts at the complaint of the harmed person."¹⁹

The Penal code is not yet in force. It may enter into force on 1 October 2011, if the law establishing this date, as suggested by the Ministry of Justice, is adopted by the Parliament.²⁰

DATA PROTECTION AUTHORITY

The new authority for protecting personal data, the National Authority for the Supervision of Personal Data Processing (ANSPDCP), was created by Law No. 102/2005,²¹ which replaced the previous supervisory authority (called "The People's Advocate").²² The law regulates the transfer of the database from the People's Advocate Office to the ANSPDCP. Due to the delay in creating the ANSPDCP, the Romanian Government issued Emergency Ordinance No. 131/2005, which delayed the authority's creation date until 31 December 2005.²³ The new authority's internal regulations were adopted on 2 November 2005.²⁴ The ANSPDCP opened in February 2006, and the new institution began to provide advice and help with respect to

17 Mariana Stoican, "Measures to Protect Human Dignity and Personal Image Rights," Radio Romania International, 2002, available at <<http://merlin.obs.coe.int/iris/2002/10/article21.en.html>>.

18 Law No. 286/2009 regarding the Penal Code, Official Monitor No 510, 24 July 2009. Full text available in Romanian at <<http://www.avocatnet.ro/UserFiles/articleFiles/noul-cod-penal-2009-text-integral.html>>.

19 The term "unlawfully" used in the text corresponds to the Romanian word "fara drept" which literally translated is "without right". This latter expression means that there may be some cases when interferences with the right to privacy is done in accordance with the law – for example in case of a penal investigation with a judge approval.

20 Draft laws from the Ministry of Justice available at Hotnews.ro's website, *supra*.

21 Official Monitor No. 391, 9 May 2005, available in Romanian at <http://www.legi-internet.ro/index.php/Legea_privind_infiintarea_org/82/0/>..

22 See <<http://www.avp.ro/indexen.html>>.

23 Official Monitor No. 883, 3 October 2005, available at <http://legi-internet.ro/blogs/index.php?title=autoritatea_naa_355_ionala_de_supraveghe&more=1&c=1&tb=1&pb=1>.

24 Published in the Official Monitor No. 1004 of November 11 2005, available at <<http://legi-internet.ro/blogs/index.php?p=348&more=1&c=1&tb=1&pb=1#more348>>.

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infringements of the personal data legislation.²⁵ Starting with 21 January 2008, the authority of ANSPDCP was extended²⁶ to include monitoring the implementation of Law No. 298/2008 on data retention.

The budgetary cuts of 2009 have significantly affected the activity of the Authority. The budget allocated for the year 2009 was insufficient to provide payment for the 50 people the ANSPDCP was supposed to hire. In fact, by August 2009, only 35 positions had been filled.²⁷ The budget for 2009 did not allow the Authority to do any investigations outside Bucharest.²⁸

Since June 2006, four decisions have been issued by the ANSPDCP regarding the application of the personal data legislation. These decisions establish standard notification forms (modified in 2008),²⁹ categories of sensitive personal data processing operations,³⁰ notification exemptions,³¹ and situations in which the simplified notification form for personal data processing may be used.³² In 2007, the ANSPDCP issued several orders. One order, for example, implemented the online registry of controllers; another abolished the notification fee.³³ In 2007 the ANSPDCP also issued a decision regulating the transfer of personal data to third countries.³⁴ In 2008 and 2009 the ANSPDCP continued to regulate the personal data processing notification regime³⁵ by issuing a decision concerning the standard notification form and the procedure for the authorisation of health-related data processing.³⁶ The decision also mandates that, in the absence of the subject's express written consent, an operator must first obtain authorisation from ANSPDCP before processing such data.

In 2008, the ANSPDCP applied sanctions against a legal firm for unlawful processing of personal data (they didn't respect an individual's right to be informed that his/her data are being processed) and against a financial private company for not having observed a client's right of intervention.

25 See <<http://www.ceecprivacy.org/main.php?s=2&k=romania>>.

26 See <http://www.dataprotection.ro/index.jsp?page=Comunicat_presa_extindere_atributii&lang=ro>.

27 Bogdan Manolea, Romania National Report – EDRi, December 2009, available at <<http://www.lidh-france.org/IMG/pdf/ETUDE-ROUMANIE-EN.pdf>>.

28 ANSPDCP 2009 Annual Rapport, available in Romanian at <<http://www.dataprotection.ro/servlet/ViewDocument?id=623>>.

29 Decision No. 95/2008, Official Monitor No. 876, 24 December 2008.

30 Decision No. 89/2006, full text in Romanian and English summary available at <<http://www.glin.gov/view.action?glinID=184027#>>>.

31 Decision No. 90/2006, full text in Romanian and English summary available at <<http://www.glin.gov/view.action?glinID=184028#>>>.

32 Decision No. 91/2006, full text in Romanian and English summary available at <<http://www.glin.gov/view.action?glinID=184029#>>>.

33 The abolishment was made by Government Emergency Ordinance No. 36/2007 – Official Monitor No. 335, 17 May 2007. See <http://legi-internet.ro/blogs/index.php?title=doua_vesti_bune_de_la_anspdcp&more=1&c=1&tb=1&pb=1>.

34 See Decision No. 28/2007, available at <http://www.dataprotection.ro/images/PDF/decizie_282007_en.pdf>.

35 See <http://m.cdep.ro/pls/legis/legis_pck.hp_act?ida=84675>.

36 Decision No. 101/2008, Official Monitor Part I, No. 4, 19 January 2009.

In 2009, ANSPDCP³⁷ fined two mobile phone companies for sending SMS to their subscribers despite the fact that the subscribers had not opted to receive them³⁸ as well as a financial company that sent unsolicited SMS messages to a former client.³⁹ A private company was fined for having used video cameras to monitor access to public/private areas without having previously notified the authority. Furthermore, the company was fined for having used the images for other purposes than just surveillance.⁴⁰

The Authority has made it clear several times that the practice, common to several commercial companies, of asking for the client's CNP (Personal numerical code – a unique identifier for each physical person) on invoices is not supported by any legislation. The legislation covering the content of invoices⁴¹ does not imagine the introduction of the CNP on the invoice. And, according to the ANSPDCP, there are no provisions requiring the CNP for any other tax.⁴²

The ANSPDCP also fined a local company that provided Internet Street View services because it did not notify the Authority or blur the collected personal data (faces, car numbers, *etc.*).⁴³

In 2010, another telecommunications company was fined for having disclosed its subscribers' personal data to an insurance company without first asking for their consent.⁴⁴

The ANSPDCP issued a decision in 2009 that established a framework for the processing of health-related personal data.⁴⁵ In 2010, the Authority sanctioned Health Insurance House in Brasov county for posting its list of debtors on its Web site, some 30.000 local individuals along with their personal data (name, address, the number of their contracts).⁴⁶

37 See ANSPDCP 2009 Annual report, *supra*.

38 See "Romanian Authority Fines Vodafone for Spamming," Trading Markets, 2 March 2009, available at <<http://www.tradingmarkets.com/site/news/Stock%20News/2201164/>> and <http://www.dataprotection.ro/index.jsp?page=Comunicat_presa_investigatie_Orange&lang=en>.

39 See <http://www.dataprotection.ro/index.jsp?page=Comunicat_presa_investigatie_la_Garantibank_International_N.V._Sucursala_Romania_SA&lang=en>.

40 See <http://www.dataprotection.ro/index.jsp?page=Comunicat_de_presa_referitor_la_investigatia_efectuata_la_SC_Petrom_SA&lang=en>.

41 Art. 155(5) of Title VI of the Fiscal Code transposing Art. 226 of Directive 112/2006/EC.

42 See Bogdan Manolea, "CNP-ul nu trebuie cerut de magazinele online," ("E-commerce businesses may not ask for the CNP"), 4 September 2009, at <<http://legi-internet.ro/blogs/index.php/2009/09/04/cnp-nu-trebuie-cerut-magazinele-online>>, See also the ANSPDCP 2008 Annual report at <<http://www.dataprotection.ro/?page=Rapoarte%20anuale&lang=ro>> and 2009 Annual report, *supra*.

43 See ANSPDCP 2009 Annual report, *supra* at 27-28.

44 See <http://www.dataprotection.ro/index.jsp?page=stire_10052010&lang=ro>.

45 Decision No. 101/2008, which entered into force on 1 January 2009, is described in English in Tuca Zbarcea Asociatii, "Legal Bulletin January 2009," at 6-7, available at <http://brconline.eu/library/Legal-Bulletin-Tuca_Zbarcea_&_Asociatii-January-2009.pdf>.

46 ANSPDCP, press release of 7 July 2010, available in Romanian at <<http://www.dataprotection.ro/>>

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The Authority may be asked for its opinion on normative acts. For example, in 2008 it was consulted for 17 normative acts. However, such requests are not obligatory for an institution/body, and such opinions are not published on the ANSPDCP 's Web site or in any official newspaper, not even *Monitorul Oficial*.

Between 2006 and 2009, the Authority carried out a series of activities in to elevate personal data protection awareness, most of them directed at the local public authorities. These awareness activities also included a joint conference with the Romanian Banks' Association regarding personal data protection and processing within the financial and banking sectors.⁴⁷ The ANSPDCP has also been involved in awareness activities, usually in partnership with the public sector (Prefects' offices in several counties, Police Inspectorates), the private sector (professional associations in real estate, notaries public, Chambers of Commerce) and the educational sector (universities in Sibiu and Tg. Jiu).⁴⁸

The ANSPDCP has also organised the "Open Doors Event" and several other events on the occasion of the European Data Protection Day (28 January).

According to a 2008 EU report on the citizens' perception regarding the protection of their personal data, Romanian citizens were poorly informed and educated about data protection issues.⁴⁹ Only 42 percent of Romanians were concerned about giving their personal data online, about 36 percent answered they did not know whether legislation in the domain was enough to solve online personal data issues, 47 percent had no idea they had the right of access to their personal data retained by others and 79 percent did not know of the existence of the Romanian data protection authority.

MAJOR PRIVACY & DATA PROTECTION CASE LAW

At the beginning of 2010, the Bucharest Tribunal confirmed the decision of a local Bucharest court imposing upon the town hall of one of the Bucharest districts damages of €10.000 damages to a an individual whose personal data had been posted on the town hall's Web site identifying him as someone who had the right to free local transport. The Web site showed not only individuals' names, but also addresses, identification numbers, details of certain social cases, and details of medical conditions such as HIV infection.⁵⁰

page=stire_03072010&lang=ro>.

47 See ANSPDCP, Buletin Informativ trim. II, at 2, at <<http://www.dataprotection.ro/servlet/ViewDocument?id=391>>

48 See *supra* <<http://www.ceecprivacy.org/main.php?s=2&k=romania>>

49 See <http://ec.europa.eu/public_opinion/flash/fl_225_en.pdf>.

50 See "Romania: Moral damages for publishing personal data online," EDRI-gram No. 8.4, 24 February 2010, at <<http://www.edri.org/edrigram/number8.4/romanian-case-moral-damages-personal-data>>

In 2009, the Bucharest Tribunal ruled that two publications⁵¹ had to pay moral and material damages to an actress for having infringed her right to private life and image by posting incorrect, unverified information about her in their publications. The decision was not final, however, and the publications decided to appeal.

Also in 2009, a famous couple obtained an interim judicial restraining order against a local tabloid, requiring it to take down photos taken by paparazzi during their holiday in France and prohibiting it from publishing photos of the couple during their private moments.⁵²

II. FOCUS AREAS

NATIONAL SECURITY, GOVERNMENT SURVEILLANCE & LAW ENFORCEMENT

Wiretapping, access to, and interception of communications

Intercepting telephone calls, opening correspondence, and other similar actions are regulated by [Penal Procedure Code and Law No. 51/1991 on National Security in Romania and Law No. 26/1994 on Police Organisation](#).⁵³ ~~Article 13 of Law No. 51/1991 allows the interception of calls in cases of crimes against the state, but only as a result of a mandate issued by the General Prosecutor of the Office related to the Supreme Court). The mandate has a maximum duration of six months, with the possibility of extension by up to three months by the General Prosecutor. According to Article 16 of the same law, the means of obtaining information may not infringe citizens' fundamental rights and freedoms, i.e., their private life, honour, or reputation, or subject those rights and freedoms to legal restrictions. Citizens who believe that their rights have been infringed can appeal to the Commissions of Human Rights of the two Chambers of the Parliament. According to Article 17 of Law No. 26/1994, which aims at preventing organised crime and serious infringements in the process of a criminal investigation, the police can require the Prosecutor's Office to intercept calls and open correspondence pursuant to Law No. 51/1991.~~

~~In 1996, the Criminal Procedure Code was modified [several times until 2010 by](#)~~

51 "Daniela Nane ar putea primi 150.000 de euro de la Spy și Gardianul" ("Daniela Nane Could Receive 150.000 Euros from Spy and Gardianul"), MediaFax.ro, at <<http://www.mediafax.ro/life-inedit/daniela-nane-ar-putea-primi-150-000-de-euro-de-la-spy-si-gardianul-4136452>>.

52 Diana Popescu, "Andreea Marin și Ștefan Bănică i-au bătut pe paparazzi care i-au filmat pe plajă" ("Andreea Marin and Ștefan Bănică Have Won against the Paparazzi that Filmed Them on the Beach"), Gandul.ro, 3 March 2009, at <<http://www.gandul.info/media-advertising/andreea-marin-si-stefan-banica-i-au-batut-pe-paparazzi-care-i-au-filmat-pe-plaja-4016732>> and Activewatch, *Libertatea Presei în România 2009*, *supra* at 26.

53 Nicolae Volonciu, *Penal Procedure Treatise*, 509-514 (Ed. Padeia 1999).

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~~Law No. 41/1996~~having, which introduced a new section (V¹) on the use of audio and video recordings for interception purposes. The section establishes the conditions under which video and audio recordings may be made, including the interception of telephone calls. Therefore, according to Article 91¹ of the Criminal Procedure Code, recordings on magnetic tape can be used as evidence if the following conditions are complied with: there are reasons to believe that a crime has been, or is about to be, committed; the criminal deed related to which the recording is made is a crime investigated *ex-officio*; the recording is useful in finding out the truth; and the authority that carries out the wiretap has been properly authorised to do so. The authority competent to issue such an authorisation is the-President of the Court who would be competent to judge the case or another judge appointed by the President. ~~authorisation is the prosecutor designated by the General Prosecutor of the Office related to the Court of Appeals.~~ The authorisation to wiretap is given for a period of up to 30 days and can only be extended for subsequent 30 days periods, and may not exceed maximum 120 days. ~~very substantial reasons.~~ The law also compels law enforcement authorities to report specific information about their wiretapping: the authorisation given by the prosecutor~~judge~~, the numbers of the telephones among which the calls take place, the names of the people carrying out the conversations, if known, the date and time at which each communication took place; and the item number of the roll or tape on which the recording is made.

The new Criminal Procedure Code adopted in 2010 will change these rules.⁵⁴ It is not clear yet when it will enter into force, but no sooner than one year after its adoption. Article 138 of the new code establishes the special techniques of surveillance which are detailed in Articles 139-153. These include: interception of conversations and communications; access to a computer system; video, audio, or photographic surveillance; locating and tracking through technical means; obtaining lists of telephone calls; retaining, submitting, or searching postal correspondence; requiring and obtaining, according to the law, data relating to financial transactions as well as a person's financial data; the identity of the subscriber, owner, or user of a telecommunication system or of an access point to a computer. Basically, these special techniques need to be approved by a judge (specifically a judge of rights and liberties) at the request of a prosecutor for a maximum period of 30 days if certain conditions are met. One of these conditions is to investigate a crime listed in the Criminal Procedure Code or one that may be punishable by imprisonment for a minimum of seven years. In emergencies, the prosecutor can also authorise these special techniques for a period of 48 hours, after which the measures need to be approved by a judge. If the judge does not approve the techniques, then all the recorded data must be destroyed.

Chapter V of the new Criminal Procedure Code, which includes Articles 154-155,

⁵⁴ Law No. 135/2010 on the Penal procedure Code, Official Monitor No. 486, 15 July, 2010.

will regulate the data conservation, partly replacing some provisions ("Procedural Provisions regarding Cybercrime") of the Law No. 161/2003 on Anti-Corruption. The same conditions as those above will apply; the one difference is that the period for using these special techniques is extended to a maximum of 90 days.

[Law No. 51/1991 on National Security in Romania allows the interception of calls in cases of crimes against the state and terrorism acts, but only as a result of a mandate issued⁵⁵ by the Romanian Supreme Court \(High Court of Cassation and Justice\)](#)

At the beginning of 2005, several cases appeared in the press with regard to the Romanian secret service intercepting the phone calls of journalists and other public figures. On 27 January 2005, the Chief of the Romanian Secret Service (SRI), Ioan Timofte, explained⁵⁶ that the phone calls of a number of Romanian and foreign journalists in Romania were intercepted for several months. The reason was that they were suspected of sabotage and crimes against Romanian National security. The Romanian Press Club and the Board of the Foreign Press in Romania Association protested⁵⁷ and demanded that SRI publicly announce the names of the monitored journalists. SRI refused, claiming that it cannot reveal information that may affect national security. The Defence Commissions in the Romanian Parliament, after hearing the testimony of the people involved, have concluded that the interceptions were legal.⁵⁸ Another case involved the Anticorruption Prosecutor (PNA) from the Mures County (Andreea Ciuca, ex-president of the Mures Tribunal), who monitored the phones of more than 70 local journalists, local and national press headquarters, and lawyers for more than 13 months from 24 April 2003 to 25 May 2004.⁵⁹ No information or explanation was offered by PNA.

According to the former director of a Romanian Secret Service unit, the cost of wiretapping one telephone line is €150 to €200 per hour⁶⁰ including all interception and transcription costs. According to President Traian Basescu, approximately 6,370 telephones were wiretapped in 2005. Figures provided by the human rights organisation Helsinki Committee (APADOR-CH) show that, in 2002, a telephone line was wiretapped for an average of 220 days. Journalists from the newspaper "Adevarul" estimated that every intercept generates about 30 minutes of recorded

55 For details, see Adrian Petre, Catalin Grigoras – Audio and Audio-video recordings, pages 11-14 (Ch Beck, 2010)

56 Dan Bucura, Gabriela Stefan, "There are paid and recruited journalists by foreign information services," Adevarul, 27 January 2005.

57, "SRI Does Not Publicize the Names of the Surveilled Journalists," Hotnews.ro, 1 February 2005, available in Romanian at <http://www.hotnews.ro/articol_14162-SRI-nu-face-publice-numele-ziaristilor-urmariti.htm>.

58 Ion M. Ionita, "Virgil Ardelean Pretends That the Intention to Intercept Journalists Calls Started from a Provocation," Adevarul, 27 January 2005.

59 Adina Angheliescu, Razvan Savaliuc, "PNA has illegally intercepted the journalists phones," Ziua, 3 February 2005.

60 "Extremely High Romanian Wiretapping Costs," EDRI-gram, Number 4.4, 1 March 2006, available at <<http://www.edri.org/edrigram/number4.4/romania>>. More info in Romanian at <http://legi-internet.ro/blogs/index.php?title=cine_si_cit_ne_asculta&more=1&c=1&tb=1&pb=1>.

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conversation per day.⁶¹ If the average per day were to climb to 60 minutes, total government spending on wiretaps would double, reaching an amount higher than the annual budget for any Ministry in Romania. For example, in 2005, the Romanian Ministry of Culture had a budget of €235 million.

During the period from 1991 to 2003, the conversations of more than 20.000 persons were intercepted under judicial orders. Another 14,000 interception mandates were issued between 1991 and 2002 at the request of national security bodies. Out of the 5,500 watched persons, only 620 were sent to court and just 238 were found guilty.

In February 2006 public concern about illegal interception led the Parliamentary Commission that supervises the Romanian Secret Service's (SRI) activities to open a supervisory procedure to inspect the SRI wiretapping centres.⁶²

In another case, also begun in February 2006, a judge of the Bucharest Tribunal ordered the SRI to produce all of the authorisations obtained for intercepting the phone calls of Romanian businessman Dinu Patriciu and other employees of the Rompetrol company.⁶³ The judge eventually convicted SRI of breaching the right to privacy of correspondence and Article 8 of the European Convention of Human Rights. The court required SRI to pay moral damages of RON50,000 because of the very long period in which his phones were tapped – a year and three months, with no real motives. Both the SRI and Patriciu appealed, and in May 2009, the Bucharest Court of Appeal upheld the Tribunal's decision.

The case has now reached the Supreme Court of Justice, which will have the final word. The trial started there in November 2009.⁶⁴

National security legislation

In response to international terrorism events, Romania has adopted specific legislation that directly attempts to combat terrorism. Law No. 508/2004⁶⁵ establishes the conditions in which the Investigating Division on Terrorism and Organised Crime, a new unit created within the Prosecutor's Office from the Supreme Court of Justice, will operate. The unit has the authority to investigate crimes related to

61 See
<<http://web.archive.org/web/20061206195718/http://www.adevarulonline.ro/arhiva/2006/Februarie/1343/174646.html>>.

62 See <<http://web.archive.org/web/20070608095723/http://www.ziua.ro/display.php?id=194466&data=2006-02-24>>.

63 See <<http://www.hotnews.ro/stiri-esential-5401491-dinu-patriciu-obtinut-castig-cauza-procesul-intentat-sri.htm>>; see also <http://www.atac-online.ro/la-zi_sri---in-boxa-acuzatilor_2514>.

64 See <<http://www.jurnalul.ro/special/anchete/convorbirile-lui-patriciu-cele-mai-scumpe-pentru-statul-roman-print-562191.html>>

65 Official Monitor No. 1089, 23 November 2004.

terrorism.

A law on combating and preventing terrorism was passed in November 2004 (Law No. 535/2004⁶⁶), changing the previous normative acts⁶⁷ that were in force since 2001. The law allows the surveillance or interception of electronic communications, as well as investigation of computer systems, where there are activities that might be considered threats to national security. The surveillance activities need to be approved by the General Prosecutor within the Supreme Court of Justice and authorised by the Supreme Court's judges. The warrant for interception or investigation cannot exceed six months.

~~A new anti-terrorism and organised crime act was adopted at the end of 2006 without any public debate.⁶⁸ The act gave more powers to the Prosecutors Department for Investigations on Organised Crime and Terrorism (DIICOT) and would allow prosecutors to monitor traffic data from electronic communications providers without warrants.⁶⁹ - this was abrogated in 2010~~

Data retention

Some provisions related to the recording of traffic data were introduced by the Law on Anti-Corruption No. 161/2003⁷⁰ in order to prevent and combat cybercrime. Under this law, applicable only to emergencies and properly motivated cases, law enforcement can expeditiously obtain the preservation of computer or traffic data if they could be destroyed or altered, and if there are good reasons to believe that a criminal offence by means of computer systems is being, or is about to be, committed, and for the purpose of gathering evidence or identifying the wrongdoers. During the criminal investigation, the preservation is undertaken by the prosecutor pursuant to an appropriate order and at the request of the investigative body or *ex-officio*, and during trial, by a court settlement. This order is valid for no longer than 90 days, and can be extended only once for a period not longer than 30 days. Earlier versions of the law would have required ISPs to retain internet traffic data for six months, but this provision was not included in the final law.⁷¹

66 Official Monitor No. 1161, 8 December 2004, full text in Romanian and English summary available at <<http://www.glin.gov/view.action?glinID=123373>>.

67 Emergency Ordinance No. 141/2001 on Punishing Terrorist Acts, Official Monitor No. 691, 31 October 2001, full text in Romanian and English summary available at <<http://www.glin.gov/view.action?glinID=76738>>.

68 Emergency Government Ordinance 131/2006, published in the Official Monitor No. 1046 of 29 December 2006, entered into force 1 January 2007.

69 See http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=8037 (in Romanian). See also "Romanian Prosecutors Want Easy Access to Communication Data," EDRI-gram, Number 5.2, 31 January 2007, available at <<http://www.edri.org/edrigram/number5.2/romania-diicot>>.

70 Official Monitor No. 279, 21 April 2003, available at <<http://www.legi-internet.ro/english/romanian-itc-legislation-and-articles/criminalitate-informatica/romanian-cybercrime-law.html>>.

71 "New Cybercrime Legislation in Romania," EDRI-gram No. 9, 21 May 2003, available at <<http://www.edri.org/edrigram/number9/cybercrime-law-romania>>.

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In 2008, Romania adopted Law No. 298/2008, which mandates that telephone and internet providers must retain certain data about their customers for six months and make this information available to investigators who have received court permission to access it.⁷² For telephone operators, the relevant data include incoming and outgoing telephone numbers, subscriber's address, location of called number, and call time and duration.⁷³ For e-mail and e-call providers, the relevant data include where the e-mail is sent from; the time and date of Internet access; and the subscriber's IP address, physical address, and name.⁷⁴ The retained information does not include content or Web sites visited.⁷⁵ Several civil society groups called on the Ombudsman to "notify the Constitutional Court about the infringement of constitutional rights" posed by the law,⁷⁶ but the Ombudsman did not consider that the law was unconstitutional and thus did not proceed with the notification.

The law was widely and strongly opposed and, as a result of a case introduced by a Romanian NGO, on 8 October 2009, the Constitutional Court decided that the law was unconstitutional⁷⁷ because "even if indirectly" it breached Article 28 of the Romanian Constitution stipulating the secrecy of correspondence and Articles 25, 26, and 30 relating to the freedom of movement, privacy, and freedom of expression respectively.⁷⁸

The Court stressed that under the new law "the physical and legal persons, mass users of the public electronic communication services or networks, are permanent subjects to [...] intrusion into their exercise of their private rights to correspondence and freedom of expression, without the possibility of a free, uncensored manifestation, except for direct communication, thus excluding the main communication means used nowadays." The Court also explained that the proportionality principle was not respected: "The Constitutional Court underlines that the justified use, under the conditions regulated by law 298/2008, is not the one that in itself harms in an

72 Official Monitor No. 780, 21 November 2008. An English summary of the law, as well as a link to the full text in Romanian, is available at <<http://www.glin.gov/view.action?glinID=217494>>; see also "Telephony Operators Compelled to Store Calls Data, for 6 Months," AGERPRES, 20 January 2009, available at <<http://www.doingbusiness.ro/en/business-news/9969/telephony-operators-compelled-to-store-calls-data-for-6-months>>; "Romania Adopts Data Retention Law," EDRI-gram, Number 6.22, 19 November 2008, available at <<http://www.edri.org/edri-gram/number6.22/data-retention-adopted-romania>>.

73 AGERPRES, *supra*.

74 *Id.*

75 *Id.*

76 Appeal to the Ombudsman filed by Asociatia Pro Democratia (APD), Active Watch - The Media Monitoring Agency (AMP), the Association for the Defence of Human Rights in Romania – the Helsinki Committee (APADOR-CH), the Center for Legal Resources (CRJ), the Center for Independent Journalism (CJI), and the Assistance Center for Nongovernmental Organizations (CENTRAS), 5 February 2009, available at <<http://www.apador.org/en/index.htm>>.

77 *Id.*

78 See <<http://www.edri.org/edri-gram/number7.20/romania-data-retention-law-unconstitutional>>; Bogdan Manolea, "Legea pastrarii datelor de trafic considerata neconstitutionala - evenimentele majore ale anului 2009" ("Law on Traffic Data Retention Considered Unconstitutional – Major Events in 2009"), 11 January 2010, at <<http://legi-internet.ro/blogs/index.php/2010/01/11/legea-pastrarii-traffic-neconstitutionala>>.

unacceptable way the exercise of the right to privacy or the freedom of expression, but rather the legal obligation with a continuous character, generally applicable, of data retention. This operation equally addresses all the law's subjects, regardless of whether they have committed penal crimes or not or whether they are the subject of a penal investigation or not, which is likely to overturn the presumption of innocence and to transform *a priori* all users of electronic communication services or public communication networks into people susceptible of committing terrorism crimes or other serious crimes."

The Constitutional Court also noted that the traffic data is personal data: "even though Law No. 298/2008 refers to data with a predominantly technical character, these are retained with the scope of providing information regarding a person and his private life".

National databases for law enforcement and security purposes

In 2008, Parliament approved legislation that permits DNA evidence related to 30 different crimes to be collected and stored in a database operated by the Forensic Institute – General Police Inspectorate.⁷⁹ Stored data can only be deleted on the court's or prosecutor's decision, raising the spectre of indefinitely stored information in the event that the court or prosecutor simply forgets to delete it.⁸⁰ It is unclear, though, how the data was obtained before the law was in force. In practice, the Institute of Legal Medicine (IML) did conduct DNA tests and hold DNA samples. Secondary legislation still needs to be produced by the Ministry of Internal Affairs and the Ministry of Justice. According to the initial law, this needed to be ready by 14 November 2008. It is also not clear how access to the database will be made. This, too, should be explained in the (still unwritten) secondary legislation. The Romanian Data Protection Authority hasn't yet been consulted.

National and international data disclosure agreements

No specific information has been reported under this section.

Cybercrime

79 Law No. 76/2008, regarding the National System of Genetic Data (SNDGJ) – entered in force on 14 October 2008, Official Monitor 289, 14 April 2008, available in Romanian at <http://www.cdep.ro/proiecte/2008/000/10/8/leg_pl018_08.pdf>; see also Bogdan Manolea, "Romania: Is Really Privacy a Topic in the Public Debate?," EDRI-gram No. 7.2, 28 January 2009, available at <<http://www.edri.org/edri-gram/number7.2/romania-privacy-in-public-debate>>. See also EDRI analysis – to be available soon at <<http://www.edri.org>>.

80 See Manolea, "Romania: Is Really Privacy a Topic in the Public Debate?" *supra*.

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Law No. 64/2004 was adopted to ratify the Cybercrime Convention, which was signed by Romania on 23 November 2001.⁸¹ Many provisions of this Convention, especially the definitions of the crimes, were incorporated into Title III (on Preventing and Fighting Cybercrime) of the Anti-Corruption Law No. 161/2003.⁸² Additional laws deal with privacy issues, such as the Patient's Rights Law⁸³ or the Law on Combating and Preventing the Traffic of Human Beings.⁸⁴

Critical infrastructure

No specific information has been reported under this section.

INTERNET & CONSUMER PRIVACY

E-commerce

In 2002, Law No. 365/2002 on Electronic Commerce⁸⁵ adopted the opt-in principle for unsolicited commercial e-mails ("spam").⁸⁶ Law No. 506/2004 also regulates spam, and transposes 2002/58/EC into the Romanian legal system. The law states that the use of electronic mail for the purposes of direct marketing without the prior explicit consent of the user will be sanctioned with a fine between ~~ROL50 million~~ 5000 RON (approx. €1,250) and 100 000 RON ~~ROL1 billion~~ (approx. €25,000). For companies with a turnover exceeding ~~ROL50 billion~~ 5 million RON, the fine could amount to as much as 2 percent of revenues. Other provisions regulate the subscribers' right to choose not to be included in printed or electronic directories and to consent to the use of their personal data in the directory. Companies that infringe this right are subject to a fine of between 30 000 Ron ~~ROL300 million~~ (approx. €7,500) and 100 000 RON ~~ROL1 billion~~ (approx. €25,000). Law No. 506/2004 further stipulates that the provider of a publicly available electronic communications service must take appropriate measures to safeguard the security of its services, and to inform subscribers and users about any risk of a security breach.⁸⁷

The ANSPDCP has acted to implement the above-mentioned legislation and succeeded in levying three fines in 2008 for unsolicited commercial messages sent by

81 Official Monitor No. 343, 20 April 2004, available in Romanian at <<http://www.legi-internet.ro/ratifycybercrime.htm>>..

82 Official Monitor No. 279, 21 April 2003, *supra*..

83 Law No. 46/2003, Chapter IV, Official Monitor No. 51, 29 January 2003, full text in Romanian and English summary available at <<http://www.glin.gov/view.action?glinID=85080>>..

84 Law No. 678/2001, Article 26, Paragraph 2, Official Monitor No. 783, 11 December 2001, full text in Romanian and English summary available at <<http://www.glin.gov/view.action?glinID=78346>>.

85 Official Monitor No. 483, 5 July 2002, available at <<http://www.legi-internet.ro/en/e-commerce.htm>>.

86 Art. 6(1) provides that "commercial communications through the electronic mail are forbidden, except for the case when the recipient expressed his/her agreement to receive such communications."

87 Law No. 506/2004, *supra*.

SMS and e-mail and four fines in 2009 for SMS.⁸⁸

ANCOM, the communications authority, with competence in the domain until March 2009, applied fines to 13 legal personal and two natural persons for "spam" as well as two fines for private companies that refused to send the requested information regarding the transmission of unsolicited commercial messages. In 2009, the communications authority levied 14 such fines, five for spam and nine for not providing requested data. Starting in March 2009, the competence in the domain was passed on to the Ministry of Communications and Information Society (MCSI).⁸⁹ Since then, no fines have been issued for this infringement.

Cybersecurity

In recent years there have been several security breaches involving Romanian Web sites that resulted in the public disclosure of personal data on the Internet. One of the most notorious related to a major online job-search company that processed the data of over 1.3 million users. Because of a software bug, the data (including users' passwords) of more than 10.000 people were publicly disclosed.⁹⁰

Law No. 451/2004 concerning time-stamping has been added to the Romanian portfolio of laws regulating electronic signatures.⁹¹ A time stamp shows when an electronic document was created or signed. The time stamp registration must be maintained for at least 10 years.

Time stamps are usually used to verify an electronic signature, the validity of the electronic signature certificate in the Internet auctions, and authenticate copyright when there is a requirement for a certain date for the copyrighted materials. The law also regulates the liability of time stamp services providers, who are responsible for losses suffered by customers as a result of their failure to comply with the provisions of the law. Providers are required to contract a liability insurance policy or obtain a warranty certificate from a financial institution. The Law entered into force on 5 December 2004.⁹²

Online behavioural marketing and search engine privacy

⁸⁸ See *supra* in the text.

⁸⁹ See Bogdan Manolea, "Sanctionarea spamului: o utopie?!", ("Sanctioning Spam – an Utopia?!"), 16 September 2009, at <<http://legi-internet.ro/blogs/index.php/2009/09/16/sanctionarea-spam-utopie>>.

⁹⁰ See <<http://www.hackersblog.org/2009/02/02/ejobsro-si-pestele-1300000-de-conturi-cu-date-personale/>> (in Romanian).

⁹¹ Official Monitor No. 1021, 5 November 2004, full text in Romanian and English summary available at <<http://www.glin.gov/view.action?glinID=122121>>.

⁹² See Pachiu and Associates, "Information Technology: Law Regarding Temporal Marks," Legal Update, November 2004, at 6, available at <<http://www.pachiu.com/pdf/63.pdf>>.

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No specific information has been reported under this section.

Online social networks and virtual communities

No specific information has been reported under this section.

Online youth safety

Only a few online safety programmes for youth are available in Romanian, most of them developed by the project *Sigur.info*⁹³, the national contact point for youth awareness on Internet safety that was developed by "Save the Children" Romania, "Focus" Romania, and other partners. Similarly, only a few documents on this topic have been issued by electronic communications operators.

TERRITORIAL PRIVACY

Video surveillance

In Romania, the implementation and use of CCTV in public places (especially in schools with unclear privacy settings or purposes⁹⁴) is spreading fast due to the fact that Romanian legislation on the matter is quite unclear. According to Law No. 333/2003, CCTV may only be installed by authorised security companies.⁹⁵ Draft secondary legislation that was published by the Romanian Data Protection Authority in order to regulate CCT has been withdrawn from their Web site with no further explanation.

Location privacy (GPS, mobile phones, location based services, etc.)

The 2009 annual report of the Romanian DPA notes that during that year the Authority investigated a Romanian company offering Street View services (the report does not give the company's name). This company has been fined an unspecified amount for not blurring the personal data in the application (such as the faces of the persons) and for improper information on data protection. The Web site contested the fine in court, but lost.⁹⁶

93 See <<http://www.sigur.info>>.

94 See comments in Romanian at <<http://forum.portal.edu.ro/index.php?showtopic=63570&st=0&>>.

95 Law No. 333/2003 regarding the security of valuables, goods, locations and protection of persons, Official Monitor No. 525, 22 August.2003.

96 ANSPDCP 2009 Annual Rapport, *supra* at 27 and 41.

Travel privacy (travel identification documents, biometrics, etc.) and border surveillance

In 2006, the Council Regulation (EC) No. 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, was transposed into Romanian law. The transposition law⁹⁷ was never adopted until the end of 2008, when an Emergency Governmental Ordinance⁹⁸ was adopted by the Government, repealing the law of 2006. Based on this ordinance, Romania started a pilot project in Ilfov county and began issuing passports with biometric data for all citizens over six years old on 1 January 2009 (the first ones were issued on 30 January).⁹⁹

As revealed by an Inspection Report of the Romanian Data Protection Authority, the present implementation in the pilot project is infringing the Law on Data Protection. Thus, there are no procedures that explain how the biometric data can be gathered. The Passport Authority did not provide the ANSPDCP with any information. What is clear is that there is no special consent required, even though the data collected is sensitive. The Ilfov authorities gathered ten fingerprints and could not prove which two fingerprints were stored in the passport's chip. The General Passport Division (GPD) could not explain why it needed to keep the data for 30 days and why it had kept all the applications since the beginning of the year. GPD didn't have enough security measures implemented (username, password, access card for each user). There were no access logs. All the major problems presented above were rectified by the Authorities after an inspection by the ANSPDCP.¹⁰⁰

Civil society and religious groups, organised as the "Coalition Against the Police State," organised a protest and an on-line petition that got more than 15,000 signatures.¹⁰¹ The protesters were particularly concerned that the government made this decision in the absence of any public debate about its social, economic, and religious impact.¹⁰² On February 18, the Romanian Appeal Court rejected a legal challenge brought by NGOs, and on March 3, the Legal Commission of the Senate

97 Law No. 279/2006 privind personalizarea centralizată a pașapoartelor cu date biometrice (Law No. 279/2006 on the Centralized Personalization of the Passports with Biometric Data), Official Monitor No. 596, 11 July, 2006.

98 Government Emergency Ordinance No. 94/2008 pentru stabilirea unor măsuri privind punerea în circulație a pașapoartelor electronice, precum și producerea altor documente de călătorie (No. 94/2008 for Establishing some Measures regarding the Putting into Circulation of the Electronic Passports, as well as Producing other Travel Documents), Official Monitor No. 485, 30 June 2008, later modified – insignificantly – by Government Emergency Ordinance No. 87/2009, Official Monitor No. 452 1 July 2009.

99 *Id.*

100 ANSPDCP, Report of 14 April 2009 leaked to the Internet, available in Romanian at <<http://victor-roncea.blogspot.com/2009/05/raport-secret-de-pe-masa-lui-geoana.html>>.

101 "Romania: Protests Against Biometric Passports," EDRI-gram No. 7.3, 11 February 2009, available at <<http://www.edri.org/edri-gram/number7.3/romania-biometric-passports-protests>>.

102 *Id.*

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issued a favourable opinion of the ordinance.¹⁰³ By the middle of 2009, the Parliament approved the Emergency ordinance without any modifications.¹⁰⁴ By the end of 2009 the system was implemented in almost all the other counties in Romania.

In recent years, the Bucharest transport authority (*Regia Autonoma de Transport Bucuresti* or RATB) has implemented a series of smart cards for travellers that include an RFID chip.¹⁰⁵ There is relatively little information about which data are collected and how they are processed (the Web site does not even have any kind of "Privacy Policy"). Initially, the cards were only nominal with the name and Personal Numerical Code (CNP) written on it. Now there are two types of cards; one nominal (with the name and first seven digits of the CNP on them) and the other without any name. It is unclear at this point if this is a purely anonymous system. RATB has announced that from the beginning of 2010 the old paper tickets would no longer be available, but so far they have not been withdrawn.

National ID& smart cards

No specific information has been reported under this section.

RFID tags

No specific information has been reported under this section.

BODILY PRIVACY

Article 5 paragraph 3 of the Law No. 76/2008,¹⁰⁶ which concerns the judicial decision on the forced taking of biological data from a suspect who refuses to supply it voluntarily, has been challenged in the Constitutional Court. The Constitutional Court rejected the motion, considering that "the person in question, has the right to decide upon the necessity of drawing biological samples from a certain category of people, that is the suspects. [...] The current scope is entirely in agreement with the requirements imposed by Art. 8 paragraph 2 of the Convention for the protection of human rights and fundamental freedoms and by Art. 53 of the Constitution, the

¹⁰³ *Id.*

¹⁰⁴ Law No. 249/2009 for privind aprobarea Ordonanței de urgență a Guvernului nr. 94/2008 pentru stabilirea unor măsuri privind punerea în circulație a pașapoartelor electronice, precum și producerea altor documente de călătorie (Law No. 249/2009 for Approving Government Emergency Ordinance 94/2008 for Establishing some Measures Regarding the Putting into Circulation of the Electronic Passports, as well as Producing other Travel Documents – *see supra*), Official Monitor No. 462,3 July 2009.

¹⁰⁵ Official info in Romanian at <<http://card.ratb.ro/>>.

¹⁰⁶ Law No. 76/2008, regarding the National System of Genetic Data, *supra*.

involvement of the authority in the intimate and private life being justified".¹⁰⁷

WORKPLACE PRIVACY

No specific information has been reported under this section.

HEALTH & GENETIC PRIVACY

Medical records

No specific information has been reported under this section.

Genetic identification

No specific information has been reported under this section.

FINANCIAL PRIVACY

No specific information has been reported under this section.

E-GOVERNMENT & PRIVACY

The e-government portal was launched in September 2003.¹⁰⁸ Users can register for interactive and transactional services. Links to all central and local government departments are also included. There are nine fully online interactive services and 687 administrative forms that can be downloaded, filled in, signed, and electronically submitted to the appropriate authority. Moreover, a Unique Form Service system gathers together nine e-services for businesses. The number of available services and forms is continuously being extended. The e-services are designed for large contributors and provide unified access for e-government services.¹⁰⁹

In order for the portal front-office to be a single point of access to e-government services, the National Electronic System (NES) has been developed in parallel to

107 Decision 485, 2 April 2009 to Reject the Exception of Unconstitutionality of Art. 5 Paragraph 3 of the Law 76/2008, Official Monitor No 289, 4 May 2009, available in Romanian at <<http://www.ccr.ro/cauta/DocumentOpen.aspx?Guid=0acce7c-c031-4c64-aa4d-3050235f8cde&type=D&action=open>>

108 See <<http://www.e-guvernare.ro/>>.

109 ePractice, eGovernment Factsheet – Romania – national Infrastructure (June 2010), available at <<http://www.epractice.eu/en/document/288409>>.

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serve as the portal's infrastructure. NES routes requests to a back-end system using XML-based Web services. All Romanian institutions are legally required to provide access to their online services through the portal and NES. NES works as a data interchange hub that ensures interoperability with back-end systems across government. A citizen or business has access to the portal, signs on, and fills in and submits a form directed through the NES to the relevant government agency. Moreover, the NES provides a central authentication service allowing users to access all services using a digital certificate.¹¹⁰

OPEN GOVERNMENT

The Law regarding Free Access to Information of Public Interest was approved in October 2001.¹¹¹ The law allows any person to ask for information from public authorities and state companies. The authorities must respond in a maximum of 30 days. There are exemptions for national security, public safety and order, deliberations of authorities, and personal data. Those whose requests have been denied can appeal to the agency concerned or to a court. The Law was amended twice in 2006. The amendments bring "any authority or public institution which uses or manages public financial resources, any state company (*régie autonome*), and any national company, as well as any commercial society under the authority of a central or local public authority and of which the Romanian state or a territorial-administrative unit is a single or major shareholder" within the scope of the Law, and also makes procurement contracts publicly accessible.¹¹²

The 1999 Law on the Access to the Personal File and the Disclosure of the *Securitate* as a Political Police¹¹³ allowed Romanian citizens to access their *Securitate* (secret police) files. It also allowed public access to the files of those aspiring to public office. The law set up the National Council for the Search of Security Archives (CNSAS)¹¹⁴ to administer the *Securitate* archives. The law was amended in 2005 and 2006,¹¹⁵ and was declared unconstitutional by the Romanian Constitutional Court in 2008.¹¹⁶ The CNSAS continues its activities, however, under Governmental Emergency Ordinance No. 24/2008,¹¹⁷ which was passed less than two months after

110 *Id.*

111 Law No. 544/2001.

112 Law No. 371/2006, Official Monitor No. 837, 11 October 2006; Law No. 380/2006, Official Monitor No. 846, 13 October 2006. Law No. 371/2006, full text in Romanian and English summary available at <<http://www.glin.gov/view.action?glinID=185933>>. See also Law No. 80/2006, full text in Romanian and English summary available at <<http://www.glin.gov/view.action?glinID=185987>>.

113 Law No. 187/1999, Official Monitor No. 603, 9 December 1999, full text in Romanian and English summary available at <<http://www.glin.gov/view.action?glinID=69500>>.

114 See <<http://www.cnsas.ro/>>.

115 Governmental Emergency Ordinance No. 149/2005, Official Monitor No. 1008, 14 November 2005; Governmental Emergency Ordinance No. 16/2006, Official Monitor No. 182, 27 February 2006.

116 Decision No. 51/2008.

117 Official Monitor No. 182, 10 March 2008.

the Romanian Constitutional Court's decision.¹¹⁸

The Law on Protecting Classified Information was enacted in April 2002 at the behest of the North Atlantic Treaty Organisation.¹¹⁹ Its drafters used an expansive view of classification that will limit access to records under the access to information law. The law was strongly criticised by the Opposition and by civil society.¹²⁰

In 2008, the Bucharest Court of Appeal partially annulled an order by the Prime Minister¹²¹ that classified the minutes of all government meetings as state secrets.¹²² The court ruled that this decision violated Law No. 182/2002 (protection of classified information) and Law No. 544/2001 (free access to public information), and that only passages that implicate national security matters could be withheld.¹²³

Specific work done by NGOs – especially the Institute for Public Policies (IPP)¹²⁴ and Activewatch¹²⁵ – note that real access to public information is a major problem in Romania: "The legislation in force is not consistently, efficiently, and unitarily put into practice. The reflex attitude of clerks is to treat as secret the information that refers to the administration of the public money and assets. The restricting methods include delaying or ignoring requests or exaggerated costs. On the other hand, citizens, journalists, and non-governmental organisations do not know their legal rights, or the ones who know them do not exercise them because of the constant discouragement by the public clerks."

The IPP's reports of 2009 also show that "only 40 percent of Romania's citizens have heard of the existence of the law on the free access to public interest information" and only 20 percent have ever used the provisions of this law.

The IPP shows that the town halls "do not have the information organised so as to promptly make it public". Furthermore, the information that should be published online is not to be found on the Internet sites and "it is still extremely difficult and costly to get the public data on the local services". Some town halls simply ignore requests and even court cases and court decisions: "neither the law, nor the respect

118 See <<http://www.cnsas.ro/>>.

119 Law No. 182/2002, Official Monitor No. 248, 12 April 2002, full text in Romanian and English summary available at <<http://www.glin.gov/view.action?glinID=81973>> .

120 See The Association for the Defence of Human Rights in Romania – The Helsinki Committee (APADOR-CH). The Limits to Information in Romanian Legislation, *supra*.

121 Decision No. 261/2007.

122 APADOR-CH, Press Release Regarding Declassification of Government Meeting Minutes, 18 November 2008, *supra*.

123 *Id.*

124 See IPP reports – "A performing public administration means quality services for the citizens", IPP, July 2009;

"Public interest information, a right not a favour" IPP, October 2009; "Transparency of the public acquisition process in the local administration in Romania: challenges, obstacles, learnt lessons", IPP, April 2009., all available at <<http://www.ipp.ro>>.

125 See Activewatch, *Libertatea Presei în România 2009*, *supra*.

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for the citizen seem to matter for certain town halls, as is the case of the one for district five of București".

A general tendency is the decrease of court cases introduced in response to the refusal of providing access to information but, at the same time, the number of cases for the non-observance of answering terms and incomplete answers has increased.

OTHER RECENT FACTUAL DEVELOPMENTS (WITH AN IMPACT ON PRIVACY)

A series of media scandals made the front pages of newspapers in 2009 and 2010 that had as "informatic support" recordings or transcripts of private conversations (face-to-face or phone conversations).

On 10 November 2009, the daily *Curentul* published the transcript (and posted the recording on its Web site) of a conversation between two reputed journalists, Sorin Rosca-Stanescu and Bogdan Chireac, on the one hand, and the head of the National Agency for Integrity, Catalin Macovei, on the other. In the conversation, the two journalists exerted pressure on Mr. Macovei to give them access to information regarding highly-placed politicians (such as, for example, bank accounts numbers).¹²⁶

On 10 December 2009, Senator Catalin Voicu (Social-Democrat) was invited for questioning by the Anti-Corruption National Department (*Directia Nationala Anti-Coruptie* or DNA). He was later arrested and investigated for corruption and trafficking in influence. The main accusations were based on phone calls between him and various other individuals. The transcripts of the incriminating conversations were leaked to the media and widely published/broadcast.¹²⁷

On 3 March 2010, Antonie Solomon, the mayor of Craiova (south-eastern Romanian, a city of 200,000 inhabitants) was arrested for alleged bribery based on several discussions between him and the owner of a football club that were intercepted while the latter was under surveillance for corruption.¹²⁸

On 21 June of the same year, the TV owner and journalist Dan Diaconescu was

126 Dana Iliescu, "Roșca Stănescu și Bogdan Chirieac - șantaj la șeful ANI" ("Sorin Rosca Stanescu and Bogdan Chireac – Blackmailing the NAI Head"), in *Curentul*, 10 November 2009, available at <<http://www.curentul.ro/2009/index.php/2009111036663/Actualitate/Rosca-Stanescu-si-Bogdan-Chirieac-santaj-la-seful-ANI.html>>.

127 Attila Biro, "Reteaua, metodele si clientii lui Catalin Voicu. Ce discuta oamenii de afaceri cu politicienii si judecatorii cand vor sa ingroape dosare" ("The Network, the Methods and the Clients of Catalin Voicu. What the Businessmen talk with Politicians and Judges when They Want to Bury a File"), *Hotnews*, 18 March 2010 available at <<http://www.hotnews.ro/stiri-esential-7046536-reteaua-metodele-clientii-lui-catalin-voicu-discuta-oamenii-aface>>.

128 Valentine Tudor, "Solomon, încătușat" ("Solomon Hand-cuffed"), *Gazeta de Sud*, 3 March 2010, available at <<http://www.gds.ro/Actualitate/2010-03-03/Solomon,+incatusat&hl=solomon%20incatusat&tip=toate>>.

invited to DNA for questioning. He was later detained and arrested for 29 days under accusations of blackmail and threats against a local mayor. The accusations against him were also based on taped conversations between one of his employees and the mayor.¹²⁹ Diaconescu appealed and is currently being investigated at liberty. His employee is still in preventive arrest@.@.

III. NON-GOVERNMENTAL ORGANISATIONS' ADVOCACY WORK ON PRIVACY

There have been limited campaigns by the private sector or civil society in the field of data protection. Most of the human rights associations have dealt with cases infringing privacy, but none has insisted on a special campaign in this domain.¹³⁰

The beginning of 2009 was more active. The new data retention law in place and the launch of the biometric passport, inflamed a part of public opinion that was very actively and aggressively against the new provisions, especially biometric passports. Mainly, the opposition is due to their religious beliefs; they incorporated themselves into civil organisations that were dealing also with these aspects of privacy.¹³¹

IV. INTERNATIONAL OBLIGATIONS & INTERNATIONAL COOPERATION

Romania has signed and ratified the 1966 UN International Covenant on Civil and Political Rights (ICCPR) and acceded to its First Optional Protocol, which establishes an individual complaint mechanism.¹³²

Romania is a member of the Council of Europe and signed and ratified the Convention for the Protection of Human Rights and Fundamental Freedoms.¹³³ In 2001, Law No. 682/2001 was enacted to ratify the Council of Europe (CoE) Convention for the Protection of Individuals with Regard to Automatic Processing of

129 R.M., "Cum motiveaza judecatorii decizia arestarii lui Dan Diaconescu: Lasarea realizatorului TV in libertate reprezinta un pericol public. Primarul a fost haituit sistematic de inculpate" ("How the judges motivate their decision to arrest Dan Diaconescu: He is a public menace. The accused repeatedly harassed the mayor"), Hotnews, 24 June 2010, available at <<http://www.hotnews.ro/stiri-esential-7474196-update-cum-motiveaza-judecatorii-decizia-arestarii-lui-dan-diaconescu-lasarea-realizatorului-libertate-reprezinta-pericol-public-primarul-fost-haituit-sistematic-inculpati.htm>>.

130 Bogdan Manolea, Romania National Report, *supra*.

131 "Romania: Protests Against Biometric Passports," *supra*.

132 Romania signed the ICCPR on 27 June 1978 and ratified it on 9 December 1974; Romania acceded to the First Optional Protocol to ICCPR on 20 July 1993. The texts of the Covenant and of its First Optional Protocol are available at <<http://www2.ohchr.org/english/law/index.htm>>.

133 *See* <<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=8&DF=23/09/2010&CL=ENG>>.

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Personal Data (Convention No. 108).¹³⁴ The Additional Protocol to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, Regarding Supervisory Authorities and Transborder Data Flows, was adopted in Strasbourg on 18 November 2001 and Romania ratified it by Law No. 55/2005.¹³⁵ Romania also signed the Council of Europe Cybercrime Convention on 23 November 2001, and ratified it by adopting Law No. 64/2004.¹³⁶

Romania has been a member of the European Union since 2007.

134 Official Monitor No. 830, 21 December 2001. full text in Romanian and English summary available at <<http://www.glin.gov/view.action?glinID=77624>>.

135 Official Monitor No. 244, 23 March 2005, full text in Romanian and English summary available at <<http://www.glin.gov/view.action?glinID=147990>>; *see also* e-mail from Virgil Cristian Cristea, *supra*.

136 Official Monitor No. 343, 20 April 2004, available in Romanian at <<http://www.legi-internet.ro/ratifycybercrime.htm>>, English summary available at <<http://www.glin.gov/view.action?glinID=137491>>.