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4th International Conference on Information Law (ICIL) 2011

Values and Freedoms in Information Law and Ethics
Thessaloniki, Greece, May 20-21, 2011
International Society for Ethics and Technology/Ionian University/Thessaloniki Law School.

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Evolution of the data protection starting from the French experiment, in a context of vicinity: solutions and new questions - prospects

The French CNIL (National Commission for Data-processing and Freedoms)
In figures:

Each year:

- * 72.000 declared treatments
- * 120.000 phone calls
- * 25.000 received mails
- * 5.000 complaints or requests for advice
- * 200 controls
- * 13: millions of €: budget

The French law of 1979, data-processing - files and freedoms instituted an prior agreement of the CNIL when the administration wanted to carry out an automated treatment of personal data. Recently, at the time of a dinner in which I took part, with the invitation of the chairman of the SNCF, Alex Türk, president of the CNIL, pointed out with the assistance that, between 1979 and 2004, date of the transposition of the European directive, the CNIL had never given unfavorable opinion.

The law of 2004 institutes a control a posteriori of the legality of the automated treatments of data, at the same time for the public administrations and the private sector. Since 2004, the CNIL carries out effective thorough controls, as we will see it.

Since the years 1980, the CNIL used its Internet site for "to communicate" and to make publicity. The Net surfers are invited to check, on line, in some clicks, which are the "traces" left by their computer at the time of connections Internet. In fact, all the technical data of the computer and navigation are directly visible and alert the Net surfer on the questions of protection of the personal data.

The CNIL knew to mitigate the chronic lack of financial means and administrative staff and control thanks to his legal status, its strategy, and five activities:

Legal status:

It is an independent administrative authority

Strategy:

CNIL is interested mainly in the daily problems of the people and the companies

Priority activities:

- 1) CNIL is a contentious authority
- 2) It carries out spectacular controls giving place to publicity and modifications of the behaviors of the actors in the fields of his competence
- 3) It profits from the activity from the Correspondents Data-processing and Freedoms of growing number in the companies and the administrations
- 4) It develops relations followed and rich with the other CNIL in Europe and in the world
- 5) It takes part in work of the European Commissioner to the data protection and the Group Article 29

The CNIL appears, today, like a guard and a credible defender of the personal data and private life because it is illustrated in the majority of the fields of the daily life and thus it interests people.

However, successes of the CNIL are "relative" and nonsystematic for reasons of lack of means materials, manpower, of competence. In addition the passion for the social networks, Facebook, Twitter, etc. is a permanent provocation for the gendarme of the data protection since these same social networks do not respect the European right.

The offensive dynamism of the social networks causes contrasted reactions.

To control and count the files

The CNIL holds with the provision of the public the "file of the files", i.e. the list of the treatments which were declared to it and their main features.

For the treatments or files of the least dangerous personal data and most current, the CNIL works out text-frameworks to which the persons in charge of personal data must refer to carry out reduced declaratory formalities or in being exonerated.

The data processing at "the risks" or significant is subjected to authorization or opinion of the CNIL. The non-observance of these formalities by the persons in charge of files is liable to administrative or penal sanctions.

1) The CNIL is a contentious authority:

Since the reform of the data-processing law and freedoms of August 6th, 2004, the CNIL can, at the conclusion of a contradictory procedure, decide to pronounce various measurements against the persons in charge of treatment who do not respect the law: a warning, an injunction, a pecuniary penalty being able to reach 300.000 €, an injunction to cease the treatment, etc., For pronouncing these measurements, the CNIL sits in a specific training, made up of six members called "contentious formation".

This authority meets at least once a month to decide measures to be taken with regard to the persons in charge of treatment who do not respect obviously the data-processing law and freedoms. The examined files make continuation generally with a mission of control carried out by the CNIL, with the reception of complaints or any situation in which the dialog did not make it possible to restore a situation in conformity on the legal level.

2) To control - to sanction:

The actualization of the law of January 6th, 1978 by the law of August 6th, 2004 marked a strategic evolution of the activity of the CNIL and equipped it with new powers to control and sanction.

2.1) Controls

The power to control of the CNIL constitutes an average privileged mean of intervention near the persons in charge of personal data.

The CNIL apprehends the reality of the data processing thus personal and appreciates the consequences of the recourse to data processing in certain branches of industry.

The missions of control lie within the scope of an annual program of controls or in answer to specific needs (felt sorry for, requests, of council, new technology...).

The annual program of controls is adopted in plenary session. It is elaborated according to the topics of topicality and the problems whose CNIL is seized.

To control computer applications, the CNIL can:

- * to reach all the professional buildings,
- * to ask for communication of any required document and to take copy of it,
- * to collect any useful information,
- * to reach the computer programs and the data.

The CNIL in addition supervises the information system security by making sure that all the precautions are taken to prevent that the data are not deformed or are communicated to unauthorized people.

2.2) Sanctions

The CNIL has a large range of coercive measures and sanctions: except the warning, the CNIL can after an unfruitful injunction and at the conclusion of a contradictory procedure, to impose a pecuniary penalty, except for the treatments implemented by the State, an injunction to cease the treatment for those which concern the declaratory mode, or to withdraw an authorization.

In the event of urgency and of violation of the rights and freedoms resulting from the implementation of a treatment, the CNIL can decide the temporary interruption of this one or the locking of data (for three months) except for certain treatments of the State and in particular of the treatments known as of sovereignty interesting the state security, defense or public safety and those having for object the search for penal offenses or the execution of the judgments, for which the CNIL however has the possibility of informing the Prime Minister "so that it takes, if necessary, measurements making it possible to put an end to the noted violation". In the event of gravely hurt and immediate with the rights and freedoms, the president of the CNIL can ask in summary procedure the judge to order any security measure necessary to the safeguard of these rights and freedoms.

In addition, a stop of the Council of State February 19th, 2008 recognizes with the CNIL in the exercise of its capacity of sanction the quality of court.

The amount of the pecuniary penalties likely to be inflicted can reach 150.000 euros at the time of the first noted failure and 300.000 euros or 5% of the sales turnover net of tax of the last exercise if it is about a company within the limit of 300.000 euros. The amount of these sanctions must moreover be “proportioned with the gravity of the made failures and the advantages drawn from this failure”. The penal sanctions envisaged in articles 226-16 to 226-24 of the Penal code can also apply, the CNIL having the possibility of denouncing with the Public prosecutor the infringements to the law of which it is informed.

3) The Correspondents Data processing and Freedoms

The data-processing correspondent and freedoms (DPFC) became an inevitable actor in the French landscape of the data protection: The designation of a DPFC within a company, an administration or an local government agency ensures the promotion of the data-processing culture and Freedoms.

Last figures:

6869 organizations appointed a Data-processing Correspondent and Freedoms.

1803 correspondents are in activity

4) The CNIL develops relations followed and rich with the other CNIL in Europe and in the world

Vis-a-vis the Universalization of the exchanges of information (Internet, Google, social networks), with the successive waves of technological innovations, the new means deployed to reinforce the collective security of the people, (biometrics, videowatching, controls....) the CNIL engages actively with the international plan and European, while reinforcing his technical expertise.

4.1) the question of the technical expertise is fundamental

The capacity to include/understand and anticipate technological developments is from now on essential to the authorities of data protection.

The CNIL is requested more and more on the technological subjects and the implementation of innovating information systems (biometric passport, personal medical records...).

By advising the companies as of the design of their computing systems, the CNIL can encourage them to modify them, use alternative technical solutions or to envisage guarantees for the data protection of the people.

To accompany the technological mutations, the CNIL develops an activity of day before and expertise on the innovations, and reflection on the security questions which arise to the turning new technologies.

In this field, the priorities of action of the CNIL are:

- * the development of the technical expertise concerning of the complex computer applications (like biometrics or architectures for the e-voting);

- * the thorough evaluation of the safety of computing projects of national scale (as biometric visas or the passport, personal medical records or the electronic mobile bracelet);

* the participation, at the European or international level, work groups of data protection (Internet Task force of G29, International Working Group on Data Protection in Telecommunications, group of experts);

* day before and the reflection upstream on the major technological subjects which will have to influence our company in the future, in particular the field of the nanotechnologies which will have an unquestionable impact on data-processing architectures and their relations with the individuals,

* the anticipation of the technological changes so that they hold account, as of their design, of the problems data processing and freedoms. This requires the development of bilateral relations with the major industrial actors and the implication, as a member of the consortium or the steering committee, in national or European research projects;

* the information of the citizens as well as the participation in conferences on the problems of technology, the safety and the data protection;

* the contribution to actions of standardization, in particular in the field of safety (for example while taking part in the committee of the general Reference frame of interworking, controlled by the Head office of the modernization of the State).

The innovation must remain compatible with an effective protection of the personal data and private life.

Let us quote, as example, some technological innovations supervised by the CNIL:

- * Community search engines and sites
- * Billboards bluetooth
- * The geolocalization
- * RFid
- * Infotrafic
- * Pay as you drive
- * Streetview
- * Biometrics
- * Facial recognition
- * Recognition of the venous network of the finger by Hitachi

4.2) the co-operation Police - Justice within the European framework and with the international scales

The exchanges of information personal multiply within the framework of the European and international police co-operation, in particular since the attacks of September 11th, 2001 which resulted in a reinforcement of the security measures interior and control of the migratory flux.

Concretely, the Member States of the European Union can from now on exchange the genetic prints and digital certain people (treated of Prüm), while many international agreements authorize the transfer of new personal data within the framework of the fight anti-terrorist, against organized criminality or illegal immigration. In this context, the role of the controlling authorities created at the European level is paramount: the CNIL sits within the body independent of control Eurodac 2, at the sides of its counterparts and of the European Controller of the data protection, and of four common controlling authorities (ACC): Europol, Schengen, Customs and Eurojust.

5) The group article 29 and the European Commissioner with the data protection

5.1) The European Group of the authorities of protection

Article 29 of the directive of October 24th, 1995 on the data protection and freedom of movement of those instituted an work group gathering the representatives of each independent authority of data protection national. This organization joining together the whole of the European CNIL has the role of contributing to the development of the European standards by adopting recommendations, to deliver opinions on the level of protection in third countries and advising the European commission on any project having an impact on the law and freedoms of the natural persons with regard to the data processing personal. G29 meets in Brussels in plenary session every approximately two months.

The CNIL is particularly invested in work of G29, the group of the European CNIL, which it chaired since February 2008. However, president Türk does not wish any more to chair this authority because of the obstacles related to competences of the members of this authority and his dependence relative to the various governments and institutions European.

5.2) The European Commissioner with the data protection

The CEPD is an independent controlling authority from which the objective is to protect the data in personal matter and the private life and to promote the good practices in the institutions and bodies of the EU. For this purpose, it fills the following tasks:

- To control the data processing in personal matter carried out by the administration of the EU;
- To give councils on the policies and the legislative texts which touch with the private life; and
- To cooperate with the authorities of comparable nature in order to guarantee a data protection which is coherent.

Control

The mission of control consists in checking that the institutions and bodies of the EU licitly treat the data in personal matter of the civils servant and other servants of the EU. The CEPD takes care of the respect of payment (EC) n° 45/2001 concerning the data protection which is founded on two essential principles:

1. The person in charge of the data processing must respect a certain number of obligations. For example, the data in personal matter can be treated only for given and legitimate purposes, which must be specified at the time of the data-gathering.
2. The person of which the data are treated - the person concerned - profits from a certain number of juridically protected rights. It is for example about the right to be informed treatment and right to correct the data.

Consultation

The CEPD advises the European commission, the European Parliament and the Council for the proposals of new legislative texts and a whole series of other questions affecting the data protection. The mission of consultation primarily consists in analyzing the way in which the policies influential on the civil rights within the framework of the private

life. This analysis contributes to a true debate of a political nature on the way in which one new legislative text can be effective while respecting as it should be freedoms of the citizens and by surrounding them of the desired guarantees. The councils allow the European legislators to better legislate by adopting laws in conformity with the European values.

Co-operation

The CEPD cooperates with other authorities in charge of the data protection in order to promote a data protection which is coherent in all Europe. The laws as regards data protection are founded on common principles. In addition, for a growing number of European databases, control is shared between various authorities (as it is the case for the Eurodac database). The central authority of co-operation with the national authorities of control is the Group of article 29.

The site of the CNIL is, today, a model of the genre.

The left-hand column gives access the essential headings:

Presentation of the CNIL - "Your rights" - "Your freedoms" - "your responsibilities" - "files" - "More".

The column of the medium differentiates two spaces: private individuals and professionals.

1) The private individuals can complain on line (with models about mails and "Your rights in question" and it ya a space "Young people".

2) The professionals are invited to declare (automated treatments of personal data), to reach their "draft of declaration" and the "Models of mentions CNIL", with a space dedicated to "All the declarations on cnil.fr".

For memory, a list of these principal fields:

Bank - credit: data protection applied to the financial questions; files of the banks, obligations of the professionals, credit, means of payment, taxation...

Consumption - publicity - spams: prospection with the development of consumer loyalty: the customers are targets but not victims! Discount cards, advertising Harassing, Junk emails... How to fight against the abuses?

Territorial collectivities: computerization of the services (civil statue, electoral rolls...), rise of controls (video watching, geolocalization...) : the local government agencies gain to play the chart of the protection of the personal data, that of the confidence of the citizens.

Displacements - transport: monitoring on the roads, reinforced controls in the airports, geolocalization: how to take into account the constraints of safety while respecting the freedom of going and coming anonymously?

Numerical identity: biometric titles of identity, navigations on Internet traced, rise of the inspecting devices of the people: thus is built the numerical identity, but vigilance is essential to preserve a private life!

Internet - Telecommunications: does the Internet threaten the private life? The data protection constitutes a response of topicality to the massive exploitation of the personal data of the Net surfers.

Police -Safety-Justice: the fight against the delinquency and terrorism intensifies: the files of police force multiply and grow rich by biometric data. STIC, Edvige, Fnaeg, FIJAIS, Cassiopée, LOCATED...: to decipher these files and balance between safety and freedom.

Health: data of health: significant data subjected “the numerical” health proof: vital card, personal medical records, pharmaceutical file, Web doctor, electronic sheets of care...

Information system security (ISS): safety is conceived for the whole of the processes relating to the data, which it is about their creation, their use, their safeguard, their filing or their destruction. It relates to their confidentiality, their integrity, their authenticity and their availability

Schooling - minors: the protection of the young people is essential taking into consideration their daily use of new technologies. It is essential also that the monitoring of the children through biometric devices, the video watching or of the geolocalization respects their rights.

Work: new technologies work the work world: the field of human resources is largely concerned, while the monitoring of paid increases. The Data-processing law and Freedoms are invited in the debate paid employers/.

Life citizen: political communication, electoral roll, electronic administration, vote on line: is the life citizen put per hour of an easier daily life... but with which guarantees?

Video watching: generalization of the video watching in public space, with work, in the private buildings: this development must be accompanied by a better control of the respect by the rights and freedoms of the people.

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