



REPUBLIC OF BULGARIA
COMMISSION FOR PERSONAL DATA PROTECTION

ANNUAL REPORT
for the activity of
the Commission for Personal Data Protection
in 2009

pursuant to art. 7, para. 6 of the Law on Personal Data Protection

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Introduction

The report for the activity of the Commission for Personal Data Protection (the Commission) is prepared pursuant to art. 7, para. 6 of the Law on Personal Data Protection and covers the period from January 1st 2009 to December 31st 2009.

In the beginning the report covers the institutional development of the Commission. Then it consecutively presents the proceedings carried out at the Commission and the implementation of its competences, the activities related to exercising full control on the observance of the law and the registration of personal data controllers. The administrative capacity and financial status of the Commission for 2009 have also been reported. The basic trends of the international collaboration and the participation of the Commission in the activities carried out by the European authorities have been outlined. In particular the report focuses on the progress in the field of personal data protection in the context of the forthcoming accession of the Republic of Bulgaria to Schengen.

1. Institutional Development

1.1. Development of the institutional publicity of the Commission

In 2009 the Commission successfully carried on the process which had started at the beginning of 2008 related to the positive development of the institutional publicity of CPDP, the active increase in the cooperation with the media and the sustainable institutionalization of the Commission as the supreme independent supervisory authority of the Republic of Bulgaria.

A number of public events and meetings with institutions and organizations have been carried out, aiming at the recognition and strengthening the positive image of the Commission. The main efforts in the field of public relations have been focused on: the process of institutionalization of CPDP in line with the national inspection of the readiness with respect to the accession to Schengen; carrying out proactive information and communication policy concerning the activity of the commission and the national regime for personal data protection; establishing permanent relationship based on collaboration with wide range of national and specialized media and civil society organizations.

In the beginning of the year the new official website of CPDP was successfully created and put into operation. It stands out with maximum high level of conformity with the requirements to the state administration websites, specified in the Electronic Government Act and the regulations on its implementation. The characteristic features of the website include conformity with the state-of-the-art standards of architecture and design of the contents, functionality, accessibility and usability of the interface, appearance providing personality and identity of the integral online communication

environment maintained by the institution. The integration within the website of the system of electronic registration of personal data controllers and the public register of personal data controllers; ensuring the possibility for receiving visitors' feedback, electronically submitting requests, complaints and inquiries to the Commission; publishing latest news covering the operation of the institution, announcements on particular complaints, preliminary information, as well as all documents related to the practice of the Commission and the courts with respect to the administrative penal activity of CPDP – these are the main factors which turned the website into an effective communication tool, functioning actively and adequately to the advantage of the individuals.

CPDP successfully implemented its initiative concerning the elaboration of a project for amendment and supplement of the Law on Personal Data Protection (LPDP) and in February 2009 it arranged and held public discussions with the participation of the Chairperson and members of the Internal Security and Public Order Committee at the National Assembly, representatives of non-governmental organizations, academic circles and the media.

In 2009 a number of interviews in the national media with the Chairperson and members of CPDP, as well as a considerable number of communication units were implemented covering the activity of the institution. The publications during the year considerably contributed to the clarification of various aspects of the functions, powers and the mission of the institution. They included comments on issues of raised public interest concerning the observance and implementation of LPDP, outlined the parameters of the problems related to the protection of personal data in national and European context, discussed current cases of infringements of the rights of the individuals given under the Law on Personal Data Protection. Relationship based on partnership and collaboration has been established with representatives of the national electronic, printed and internet publications. The Commission consistently issued messages to the media regarding events, resolutions, opinions and acts of considering issues on its own initiative after publications which received wide response in the mass communication media.

As a result of the active information and communication policy of CPDP in 2009, as well as of the completed development of all components of the institutional appearance in the second year of its operation the second structure of members of the Commission achieved the establishment of permanent positive attitude of the Bulgarian civil society and the media, of significantly higher level of public awareness about the rights and obligation of the individuals under the Law on Personal Data Protection, about the development of privacy issues – both at political and legislative level – on an European and global scale. The policy of carrying out active institutional public communication positively enhanced the process of achieving and maintaining a considerable national level of the European standards in the field of personal data protection.

1.2. New Rules on the activity of the Commission for Personal Data Protection and its administration

On its first meeting in 2009 the Commission for Personal Data Protection adopted new Rules on the activity of the Commission for Personal Data Protection and its administration. It was promulgated in State Gazette on February 2nd 2009, abrogating the Rules on the activity of the Commission which was in force since March 2007.

The necessity of the elaboration and adoption of the Rules of 2009 was based on the new priorities adopted by the Commission for Personal Data Protection in its capacity of an independent supervisory authority in the field of personal data processing. This regulatory act aims at synchronizing the activity of the administrative units of the Commission while exercising overall control on the observance of the regulatory acts in the field of personal data protection in the course of personal data processing. The regulations set out in the Rules allowed the Commission to achieve flexibility when adopting decisions, which inevitably results in raising the efficiency of the activity of the Commission as a whole.

These Rules highlight the powers of the Commission specified in the Law on Personal Data Protection and the related proceedings carried out by the Commission. Structural changes in the administration of the Commission were made, consolidating the units assisting the Commission in a particular activity. In this way the expert activity was consolidated, a fact that led to higher results upon the implementation of the powers of the Commission specified in the legislation.

2. Proceedings carried out at the Commission for Personal Data Protection

In 2009 over 45 000 individuals and personal data controllers approached the Commission for Personal Data Protection with respect to issue within the scope of its competence. In relation with the registration of personal data controllers and the actualization of the data in the Register of personal data controllers and the registers kept by them, maintained by the Commission, over 12 000 data controllers were consulted, more than 6 000 of which were consulted in person in the reception office, and the same number – on the telephone.

2.1. Handling of complaints and requests

In order to exercise its powers for exercising overall control on the observance of the regulatory acts in the field of personal data protection, including those related to the observance of the provisions of Law on Personal Data Protection, the Commission for Personal Data Protection handles requests submitted by individuals, complaining with respect to the infringement of the statutory regulations.

At a request, demanding protection against violation of the claimant's rights, the Commission for Personal Data Protection initiates a proceeding to examine the complaint pursuant to art. 38, para. 1 of the Law on Personal Data Protection.

Upon the submission of requests, which did not reveal data concerning infringed rights of the claimant, the Commission took actions to carry out inspections and issue mandatory directions to personal data controllers with respect to the protection of personal data.

In 2009 the Commission for Personal Data Protection received total 158 requests of individuals concerning infringement of regulatory acts in the field of personal data protection.

With respect to 97 of the aforesaid requests the Commission for Personal Data Protection initiated administrative proceedings for handling the complaints, and other 10 requests were filed against individuals who do not have the capacity of personal data controllers.

The administrative proceedings under 77 complaints were closed, 13 of them concern complaints submitted in 2008, and 64 were with respect to complaints submitted in 2009. The proceedings under 3 complaints were terminated on the grounds of art. 54 of the Administrative Proceeding Code, and one complaint was forwarded for assistance to the Ministry of Interior on the grounds of art. 6 of the Law on Ministry of Interior.

Due to the withdrawal of the complaints 4 administrative proceedings were terminated, and the proceedings with respect to 5 complaints submitted to the Commission for Personal Data Protection were cancelled due to irregularities which were not corrected on time.

The administrative proceedings under 13 well-founded complaints were closed and mandatory directions were issued for termination or prevention of infringements

of the principles of processing of personal data, and with respect to 6 complaints administrative penalties were imposed, which are to be executed as per the provisions of the Administrative Offences and Sanctions Act after the enforcement of the respective decision of the Commission for Personal Data Protection.

The complaints submitted to the Commission for Personal Data Protection and examined by it may be classified based on different criteria – type of the infringement, category of data controller or category of the personal data subject to processing.

According to the personal data controller – defendants under the submitted complaints, the latter may be classified as follows:

Personal data controllers from the public sector – 28 complaints including:

- Central law enforcement authorities: 14 complaints
- Local law enforcement authorities: 9 complaints
- Judiciary authorities: 5 complaints

Personal data controllers from the private sector – 67 complaints including:

- Sector Education: 8 complaints
- Sector Media 9 complaints
- Sector Healthcare 3 complaints
- Sector Post Services 1 complaint

- Sector Telecommunications, information society: 16 complaints
- Sector Financial, Credit and Insurance Services: 17 complaints
- Sector Employment: 6 complaints
- Sector Power Engineering: 3 complaints
- Sector Transport, Tourism: 2 complaints
- Sector Direct Marketing Services: 2 complaints
- Political parties and coalitions 2 complaints

The infringement of the rights of individuals upon processing their personal data, indicated in the complaints filed against the central law enforcement authorities, typically concern the provision of personal data to third parties or circulation of personal data without informing and receiving the consent of the respective individuals, respectively without the availability of conditions for admissibility of such action of personal data processing. Typical subject of the complaints filed against personal data controllers – local law enforcement authorities is the processing of personal data in relation to the execution of acts concerning the administrative penal liability of the individuals - claimants. In this case the Commission for Personal Data Protection considers the complaints not grounded, as the personal data has been processed on legal grounds. According to art. 42 of the Administrative Offences and Sanctions Act, the statements of ascertainment of administrative violation should have exact number of specified items, including the name and forenames of the violator, age, address, place of employment, personal number. In addition, the processing of personal data does not involve their provision to third parties, as the officials dealing with the administrative violations are officers of the respective municipality,

appointed by the mayor of the municipality to exercise control on the observance of the ordinances, adopted by the Municipal Council.

The complaints filed against the judiciary authorities are differentiated as a separate category of complaints against personal data controllers. In the cases reviewed the Commission for Personal Data Protection has established that when exercising their statutory powers the personal data controllers acted in accordance with the principles and regulations of the Law on Personal Data Protection concerning processing of personal data of parties under court proceedings, including the provision of information with respect to the cases of the interested parties.

60% of the complaints filed against personal data controllers from the private sector were considered well-grounded.

With respect to the complaints submitted against personal data controllers from sector Education it should be noted that the majority of the complaints concern the refusal of access to personal data, as well as provision of personal data to third parties. With respect to the well-grounded complaints the Commission for Personal Data Protection issued mandatory directions for providing access to personal data in accordance with the request of the claimants.

There are 6 complaints filed against personal data controllers from sector Media, 2 of which are considered well-grounded. An interesting case presents a complaint filed with respect to distribution of personal data related to religious convictions. According to art. 4, para. 2 of LPDP, the processing of personal data is admissible in occasions, when it is carried out only for the purposes of journalism, fictional or artistic expression, provided that such processing does not infringe the right of privacy of the subject of personal data. In the case under review the Commission for Personal Data Protection established that the act of publishing data concerning the religious convictions of the claimant contradicts to the interdiction as per art. 5, para. 1, it. 2 of LPDP, as the publishing of such data violates the right of privacy of the subject of these personal data.

In 2009 the number of complaints filed against personal data controllers from sector Healthcare and sector Post Services is significantly lower. Considering the examined complaints the conclusion can be made, that the personal data controllers from these two sectors has taken the necessary measures for observing the legislation related to personal data processing , as well as acts ensuring the availability of the required technical and organizational measures for protection of data against accidental or unlawful destruction or accidental loss, unlawful access, amendment or distribution, as well as against other unlawful forms of data processing. It should be noted that with respect to other complaints Bulgarian Posts EAD undertook actions to regulate the processing of personal data for the purposes of providing postal services and changed its general term and conditions for dealing with customers.

The administrative proceeding according to one complaint filed against a personal data controller – medical center – was cancelled, as in the course of examining the administrative documentation the Commission ascertained that a preliminary investigation file was established for crime as per art. 311, para. 1, it. 1, with reference to art. 26, para. 1 of the Penal Code.

Individuals typically approach the Commission for Personal Data Protection concerning violations of the law made by personal data controllers from sector Telecommunications when they realize the existence of contracts between the individuals – claimants - and the personal data controller, claiming that the signatures of the individuals have been forged. As this concerns statements, which may be classified as crime and as preliminary investigation files have already been established by prosecutors, the administrative proceedings under such complaints have been suspended until the final ruling of the competent authorities whether or not there is a crime.

In 2009 the Commission for Personal Data Protection was approached with new cases concerning the circulation of personal data on Internet. It was established that with the purpose of mutual aid the personal data of a particular category users is distributed in forums as parts of scholarly papers, reports, lectures, analyses. Disregarding the violations of the Law on Copyright and Related Rights the Commission for Personal Data Protection considers that the distribution of personal data contradicts to the principle regulated in art. 2, para. 2, it. 2 and it. 3 of the Law on Personal Data Protection with respect to the proportionality and correlation of the purposes for which the personal data has been processed.

The complaints classified in the next category of personal data controllers from sector Financial, Credit and Insurance Services include claims for unlawful processing of personal data in the form of provision of personal data to third parties, as well as the carrying out additional processing of personal data, exceeding the purposes for which it has been initially collected. Although considerably fewer in number, in 2009 the Commission for Personal Data Protection was still approached with respect to unlawful processing of personal data carried out by insurance mediators with the purpose of changing the insurance fund. This circumstance is an indication of the existence of a practice and regulatory established rules concerning the change of the insurance fund, which may not avoid the unlawful processing of personal data, resulting in an act that may be classified as crime.

In 2009 the Commission for Personal Data Protection was approached with two complaints about infringements concerning processing of personal data for executing employment contracts. These complaints concerning the existence of a second employment contract without the knowledge of the respective individual are fewer in number compared to previous years, but show availability of unlawful processing of personal data in the field of employment and insurance legislation.

The second category of complaints against employers concern the unlawful provision of personal data to third parties, as well as refusals for providing the personal data registered in the employment record. It was established that the defendants under the complaints used the personal data subject to processing in order to protect their own interests exceeding their rights and obligations under the Labour Code. With respect to the complaints related to refusal of access to personal data the Commission found them reasonable and respectively issued mandatory directions for granting the access.

2.2. Registration of personal data controllers

With respect to the registration of data controllers during the period January 1st 2009 – December 31st 2009 total 42 716 new applications and documents for updating were submitted. Data on all 42 716 personal data controllers (PDC) was entered in the electronic system of CPDP.

Since the beginning of the year 3 767 personal data controllers (PDC) were registered in the Register of CPDP.

By virtue of a Decision of the Commission a procedure was launched concerning the registration of the applications submitted prior to 2007 in the information system for personal data controllers' registration and classification in accordance with the requirements for storage of archived documents. For the period under review 57 332 applications were electronically processed and classified in archive files in accordance with the requirements for the archive fund.

On April 30th 2009 at its extraordinary meeting the Commission for Personal Data Protection entered in the Register of personal data controllers and the registers kept by them all unregistered data controllers who had filed application within the period from 2003 to 2008 inclusive. The number of PDC who have been given identification numbers comes to 193 351.

The process of registration of personal data controllers is illustrated in the diagrams presented in Fig. 1 and Fig. 2.

Fig. 1

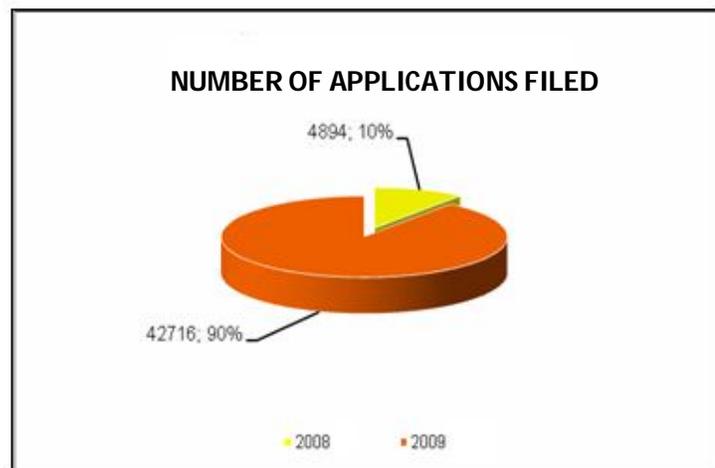
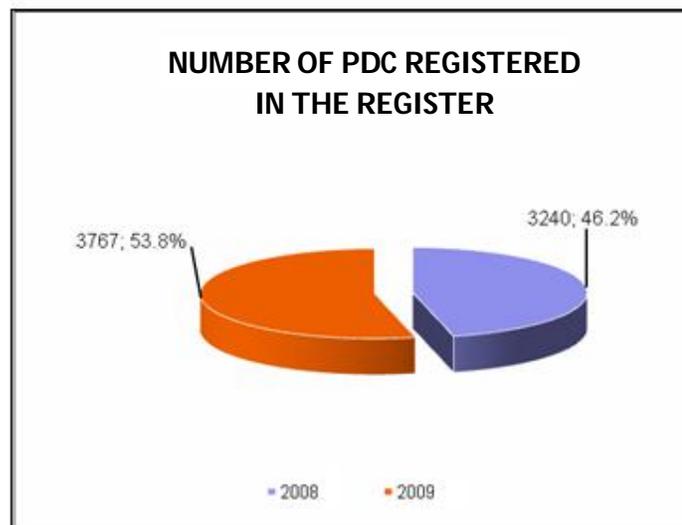


Fig. 2



When the personal data controller has declared processing of personal data under art. 5, para. 1 of LPDP or data, the processing of which endangers the statutory rights of the individuals according to a ruling of the Commission, then the Commission is bound to carry out preliminary inspection before entering the controller in the register under art. 10, para. 1, it. 2 as per art. 17b of LPDP (SG, issue 91 of 2006).

In 2008 the applications filed at CPDP concerning the registration of PDC subject to inspection as per art. 17b were 510 and from the beginning of the year to December 31st 2009 – 953, whereas the focus is put on sector healthcare, mediatory activity for job recruitment and activity related to security services.

The distribution of the personal data administrators subject to inspection as per art. 17b of LPDP is illustrated in Fig. 3.

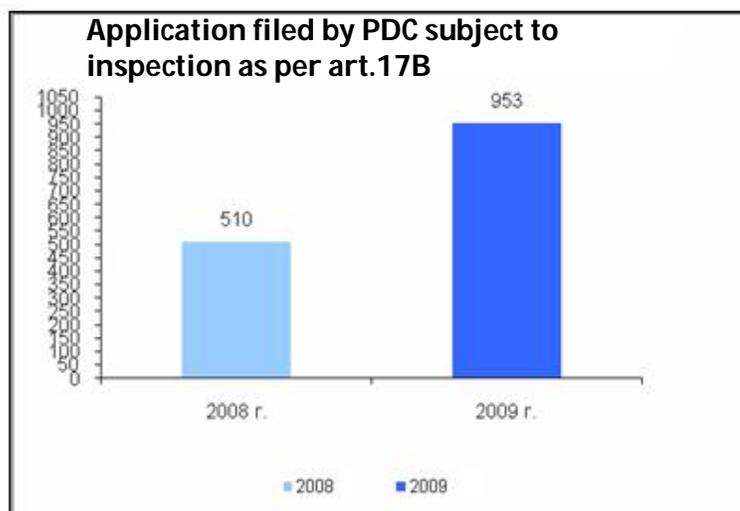


Fig. 3

In 2009 the system of electronic registration of personal data controllers (eRPDC) was modernized.

The automated system is a web-based application, covering the complete procedure of registration of personal data controllers and following the technological process of approval or refusal of their registration in the public register. In accordance with the Law on Electronic Government, eRPDC automatically communicates with the required data in the BULSTAT Register, the Register of Commercial Companies and the Civil Registration and Administrative Services, thus eliminating the standard registration of data which has already been declared by the personal data controllers to another state institution.

Upon carrying out the migration of data from the existing information system to eRPDC all existing data bases were integrated and present all applications filed at the Commission for Personal Data Protection since the beginning of 2003 are registered in electronic format.

The developed technology enables the use of the mechanism of authorization and maintains automatic and non-automatic mode of authentication of users. The mechanism of the universal electronic signature has been fully integrated, allowing that the entire registration process can be carried out electronically. The design of the system architecture and the use of trust chains for the servers enhance the reliability of the system and its information security.

The system of electronic registration of personal data controllers (eRPDC) allows the maintained public registers to be uploaded on Internet with easy access to the information contained therein.

With the purpose of maintaining the information system of CPDP (including the system of electronic registration) in 2009 a new communication, hardware and software infrastructure was developed. It provided for a normal mode of operation of the existing systems, as well as the implementation of new ones, such as the Center for Information and Contacts. Its activity is entirely oriented to better servicing of the telephone calls and rendering expert assistance.

In relation with the obligation of the Commission to maintain a public register of personal data controllers in 2009 an active process was initiated intended for updating the information contained in the register and declared by data controllers with a view to their statutory obligation to maintain current information by notifying the Commission about all changes of their data prior to the occurrence of such changes.

2.3. Expressing opinions

Pursuant to art. 4, para. 1, it. 8 of the Law on Personal Data Protection, the Commission expresses opinion concerning two main categories of issues, namely:

- on drafts of regulatory acts in the scope of activity of LPDP;
- on the implementation of the Law on Personal Data Protection.

2.3.1. Participation in the preparation of drafts of regulatory acts of the legislation and subordinate legislation in the scope of activity of LPDP

In 2009 CPDP took part in the coordination of 50 drafts of regulatory acts. This number includes drafts executed by the Ministry of Interior, as well as a number of drafts of decisions of the Council of Ministers concerning the approval of agreements between the Republic of Bulgaria and other states on issues related to the exchange of information and data protection.

Representatives of CPDP took part in the work of the intradepartmental working party for the elaboration of a draft of the Law Amending and Supplementing the Law on Electronic Messages. The envisaged amendments regulate that the Commission for Personal Data Protection shall be the monitoring authority in order to exercise control on the activity of the enterprises providing public electronic

communication networks and/or services, ensuring the observance of the rules for protection and security of the stored data pursuant to the provisions of art. 7 of Directive 2006/24/EC. The appointment of the Commission as the monitoring authority is in accordance with the obligation under art. 9 of Directive 2006/24/EC regulating that each member state should appoint a public authority to be responsible for the monitoring on its territory of the implementation of the regulations adopted by the member-states in accordance with art. 7, concerning the security of the stored data. Directive 2006/24/EC explicitly regulates that this authority may be the authority appointed under art. 28 of Directive 95/46/EC, and in the Republic of Bulgaria this authority is the Commission for Personal Data Protection.

Representatives of CPDP took part in the working party set up to implement in the Bulgarian legislation the Recommendation R (87) 15 of the Committee of Ministers to member-states regulating the use of personal data in the police sector and the commitment to implement it by the end of 2009. The task of the working party was by December 31st 2009 to elaborate a draft of the required regulatory changes with a view to the complete implementation of the Recommendation. The draft of an instruction amending and supplementing Instruction No. Iz – 381 concerning the procedure of personal data processing at the Ministry of Interior was elaborated within the set term.

2.3.2. Opinions on the implementation of the Law on Personal Data Protection

In 2009 the Commission expressed opinions on requests submitted both by personal data controllers pursuant to art. 3 of LPDP and by individuals with respect to their statutory rights. The opinions of the Commission concerning the implementation of the law have been published in the bulletins of CPDP on the official website of the Commission.

An important category of issues on which the Commission has expressed its opinion concerns the obligation of the governmental authorities and the self-government authorities to make public the declarations on conflict of interests for a particular category of officials on the grounds of art.17, para.2 of the Law on the Prevention and Disclosure of Conflict of Interests. The Commission expressed an opinion that the publication of personal data as per art. 12 with reference to art. 17, para. 2 of the Law on the Prevention and Disclosure of Conflict of Interests, exclusive of the names of the declarer, should be carried out with the explicit written consent of the individual - declarer, attached as a separate text to the same declaration. The publication should not contain the image of the signature of the declarer.

This category of opinions may include the request for an opinion concerning the appearance of the publication of the orders for substitution of agricultural land belonging to the State Land Fund in accordance with the provisions of art.24d of the Ownership and Use of Agricultural Land Act (OUALA). The Commission expressed an opinion that the orders for substitution of agricultural land belonging to the State Land Fund, uploaded on the website of the Ministry of Agriculture and Food, should contain

only the initials of the names of the individuals – owners of agricultural land, which is being substituted with agricultural land belonging to the State Land Fund. The time limit for maintaining these orders on the official website of the ministry should be appointed by the personal data controllers, taking into consideration the provisions of para.6 and para.7 of art.24 of OUALA.

With respect to the implementation of art. 64 of the Judicial System Act concerning the provision of publicity and transparency of the operation of the courts and publicity of court rulings and with a view to the protection of the rights of the individuals upon processing their personal data, the Commission has expressed an opinion that upon establishing and maintaining a public register of court rulings certain measures should be taken in order to guarantee the impossibility for identification of the individuals. Besides the initialization of the names of the individuals, the erasure of the personal numbers and addresses, measures should be taken for erasing the indications related to the physical, physiological, genetic, mental, psychological, economic, cultural, social or any other identity of the person, which may facilitate the identification of the individual despite the initialization of their names.

As in the previous year, in 2009 CPDP filed and examined a number of requests concerning the unlawful processing of personal data, such as unlawful processing of personal numbers, personal data of customers of trade companies, providing public services and requests concerning the acts of copying ID cards of the customers of mobile operators or banks. In its opinions the Commission has always indicated the conditions and principles of lawful processing of personal data and has provided detailed information on the rights of the individuals according to the Law on Personal Data Protection. The expression of opinions on the requests filed by the individuals concerning violation of LPDP is significant not only with respect to replying to the particular inquiry, but also for enhancing the public awareness in the field of personal data protection by means of uploading these opinions on the website of CPDP.

Answers have been provided to the inquiries concerning publishing personal data of owners, representatives and members of collective bodies of commercial companies in the Register of Commercial Companies, maintained by the Registry Agency. According to art.11 of the Law on the Register of Commercial Companies, the Register of Commercial Companies is public. Everyone is entitled to have free and uncharged access to it and to the electronic image of the documents, on the basis of which the registrations, erasures and announcements were made, as well as to the electronic image of the company cases of the re-registered entrepreneurs. The Agency also provides free and uncharged access to the applications contained in the information system of the Register of Commercial Companies, to the documents enclosed to them and the regulated refusals. The details of the company data, such as registered address, address of management and company representatives become public data after the registration of the company in the Register of Commercial Companies. Ordinance No. 1 on the maintenance, storage and access to the Register of Commercial Companies specifies the standard layouts of the registration applications and explicitly indicates the circumstances, which are subject to registration and should be written in the applications for registration, erasure or publishing. The Ordinance

regulates the statutory obligations on the grounds of which the Registry Agency lawfully processes the personal data of a particular category of individuals.

Inquiries have been submitted concerning the cases when employees in various retail outlets upon executing payments with debit and credit cards, the so called Electronic Payment Instruments (EPI), request that the individuals should present their identity document - ID Card - in order to check their identity. In accordance with art.31, para.5 of the Law on Payment Transfers, Electronic Payment Instruments and Payment Systems, the trader may request the identity document in the event that there are reasonable doubts concerning the identity of the EPI holder.

A number of inquiries have been sent with relation to the activity of the Urban Mobility Center EOOD concerning the issuance of electronic cards for using the public transport of the city of Sofia. With respect to the data which should be completed in the form for issuance of the electronic card for using the public transport in the city of Sofia and the type of the type of the form, the Commission has issued a mandatory direction to Capital City Company for Urban Transport EOOD (the former name of Urban Mobility Center EOOD). The Stolichna Municipal Council has adopted Ordinance on transportation of passengers and conditions of using the public urban transport on the territory of Stolichna Municipality, thus regulating the documents for the execution of the transportation – preliminary purchased tickets or tickets issued by a ticket vending machine on the vehicle, as well as civil and preferential season-tickets both on hard copy and electronic carrier. The Ordinance on transportation of passengers and conditions of using the public urban transport on the territory of Stolichna Municipality specifies the terms and conditions of the issuing and recharging the transportation documents. The use of electronic card for public urban transportation is a right, not obligation of the individuals. Therefore, the individuals who wish to benefit from this service – issuance and use of electronic card – should declare their consent for storage and processing of their personal data in electronic form.

2.4. Giving permission for transfer of personal data

In 2009 request were submitted by personal data controllers, registered under the Bulgarian legislation concerning transfer of personal data to data recipients in EU member-states, to other states members of the European Economic Area and to third states.

In accordance with art. 36a of LPDP the transfer of personal data to EU member-states and to other states members of the European Economic Area can be carried out freely and upon the observance of the provisions of the Law on Personal Data Protection. The aforementioned legal text is enforced since January 1st 2007, together with the enforcement of the Treaty on the Accession of the Republic of Bulgaria to the European Union.

The transfer of personal data to third states outside the European Union and the European Economic Area may be carried out only if they provide adequate level of personal data protection on their territories. The assessment of the adequacy of the level of personal data protection is carried out by CPDP taking into account all circumstances related to the transfer of personal data, including the category of data,

the purpose and duration of its processing, the legal framework and security measures, available in this third state. The Commission issues a decision on the requests of the personal data controllers concerning the transfer of personal data in third states, provided that the personal data controller who sends the data and the personal data controller who is the recipient of the data provide sufficient guarantees for data protection.

Art. 36a, para. 2-7 and art. 36b of LPDP regulates the terms and conditions under which CPDP may give permissions for transfer of personal data to third states, and these provisions are fully synchronized with the provisions of Directive 95/46/EC of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The transfer to data importers from the USA is admissible only if they have joined the Safe Harbour Agreement.

In order to unconditionally establish whether the personal data controller – recipient of the personal data – provides adequate level of protection, the Commission requests that the applicants for executing transfers should submit contracts including the standard contractual clauses, specified by virtue with decision of the European Commission. These standard contractual clauses are applicable to transfers of personal data to all countries outside the European Union.

The requests for transfer may conditionally be classified in the following main categories according to the purpose of the transfer.

- Transfer of personal data belonging to employees of companies, carrying out commercial activity in Bulgaria, whereas these companies are with mixed ownership or 100% owned by foreign legal entities and the centralized server for data processing is located outside the territory of the Republic of Bulgaria.

With respect to this category of requests the personal data controllers substantiate the necessity of monthly reporting and transfer of data concerning the personnel employed on the territory of the Republic of Bulgaria, as in this way the database of the personnel for the entire organization is completed in the centralized server located in the respective foreign state. The personal data of the employees which is to be transferred concerns their physical identity (names and forenames, personal number, address, telephones, place of birth, number and date of issue of passport) and their employment identity (place of work and length of service).

- Transfer of personal data belonging to individuals – applicants for employment abroad – carried out by personal data controllers who provide mediatory service related to recruitment outside the territory of the Republic of Bulgaria.

These are requests for permission concerning transfer of personal data carried out by personal data controllers – legal entities - who provide mediatory service related to recruitment abroad. It should be noted that the Employment Agency that registers these personal data controllers as mediators only after they present a copy of their certificate of registration in the Register of Personal Data Controllers in conformity with the Law on Personal Data Protection (Ordinance on the terms and conditions of providing mediatory services related to recruitment), does not require the submission of permission for personal data transfer. The fact that such type of requests have been filed at the Commission, infers that the personal data controllers

who provide mediatory service related to recruitment are better and better informed about the Law on Personal Data Protection and the subordinate legislation that regulate this matter and they are willing to carry out their activity in a lawful manner.

The requests in this category indicate data recipients including both companies established in other EU member states, and third states such as the USA, Russia, etc. Most of the requests are characterized with the fact that they specify the particular recipients of the personal data and contain enclosed evidence, proving the existence of contracts, based on the standard contractual clauses. A large number of the requests do not enclose evidence concerning the technical measures ensuring the protection of the personal data during the transfer and copies of the mediatory contracts with the job candidates or any other document, indicating that the individuals have given their explicit consent for provision of their personal data to third parties.

The personal data of the job candidates, subject to transfer, concerns their physical identity (names and forenames, personal number, address, telephones, place of birth, number and date of issue of passport) and their employment identity (place of work and length of service), as well as data about their health condition.

- Transfer of personal data belonging to individuals – patients, participating in multi-site international clinical tests.

With respect to the nature of this personal data, subject to the requested transfer, it belongs to the category of sensitive personal data, as they concern the respective individual's health, ethnicity/race, biometric data, sexual life and genetic data (art. 5 of LPDP). Characteristic of this case is that the personal data – subject to transfer – is reduced to a type which does not allow for unique identification of the individual to whom they belong both by the personal data controller, who submits the data, and the recipient personal data controller in the third state. The clinical tests only use the initials of the patients, whereas only the physician in charge of the clinical test has information about their identity. The transfer of such data requires the submission of other declarations of consent showing the explicit consent of the individuals that their personal data may be subject of transfer, indicating that they have been informed with respect to who shall have access to their personal data, the purpose and volume of transferred personal data, the time limit for their storage and the rights of the individuals regulated in Chapter Five of LPDP. In addition, information should be submitted concerning the method according to which the personal data has been collected and its reduction to a type which does not allow for unique identification of the individual whose data is subject to processing, information on the adopted technical and organizational measures concerning the personal data protection in the course of their transfer from the executors of the clinical tests to the assigner, as well as the type and volume in which the information is to be submitted. Information should also be given concerning the method of documentation of the physical destruction of the personal data after the expiry of the time limit for its storage. The personal data controller is bound to present evidence with respect to the aforementioned requirements.

3. Supervisory Activity

The procedure and methods of exercising complete control activity are regulated with the provisions of the Law on Personal Data Protection, the Rules of the activity of CPDP and its administration (RACPDPIA), Ordinance No. 1 of February 7th 2007 on the minimum level of technical and organizational measures and the admissible type of protection of personal data (hereinafter referred to as the "Ordinance"), Instruction for the control activity and Administrative Offences and Sanctions Act.

During the period under review the Commission carried out supervisory activities in the following aspects:

- Analyzing the on-going activity of the personal data controllers concerning the observance of the regulatory acts in the field of personal data protection;
- Assisting personal data controllers with consultations and instructions concerning the observance of the regulatory acts, the measures which should be adopted aiming at ensuring the personal data protection;
- Exercising direct control over the personal data controllers in the public and private sector;
- Imposing sanctions with respect to violation of the LPDP.

The control is exercised directly by the Chairperson and the members of the Commission, who are assisted by the specialized administration. According to art. 26 of the Rules of the activity of CPDP and its administration, the Legal Proceedings and Supervisions Directorate (LPS) through its structural unit – Department of Control and Administrative Penal Proceedings – assists the supervisory activity of the Commission. This activity covers the execution of inspections on personal data controllers in order to clarify facts and circumstances and to collect evidence.

The inspections constitute a combination of actions and measures, intended to ensure the lawful and efficient processing and protection of personal data.

The inspections aim at establishing the following:

- Reason for personal data processing;
- Method of maintaining the register of personal data;
- Purposes for which the personal data is processed;
- Proportionality, accuracy and actuality of personal data;
- Conformity of the level of protection of the processed data to the provisions of the Ordinance.

The control is exercised by carrying out ex-ante, on-going and ex-post inspections. Each inspection ends in a statement of findings and in the event that an administrative violation of the provisions of LPDP is ascertained, the Commission initiates administrative penal proceedings pursuant to the Administrative Offences and Sanctions Act.

Total number of carried out inspections – 698

- ex-ante – 658
- on-going – 29
- ex-post – 11

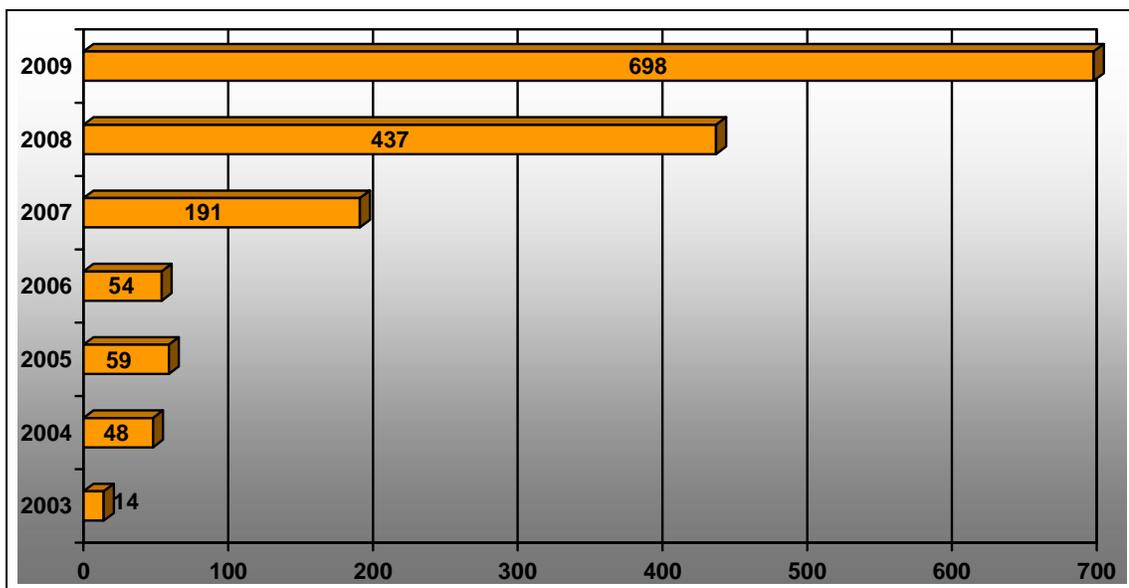


Fig. 4

For comparison: in 2008 total 437 inspections were completed, whereas in 2007 – only 191 (see the enclosed chart in Fig. 4).

As a result of the supervisory activity in 2009 total 698 statements of findings were issued.

This data shows that most ex-ante inspections were carried out on the grounds of art. 12, para. 2 of LPDP. It is due to the fact that according to the provisions of art. 17b of LPDP such inspections are mandatory prior to the registration of the personal data controllers in the register as per art. 10, para. 1, it. 2 of LPDP in the event that the data controller has declared processing of specifically protected data as per art. 5, para. 1 of LPDP or data, with respect to which the Commission regulates that their processing endangers the rights and statutory interests of the individuals.

3.1. Ex-ante inspections of personal data controllers

In 2009 total 658 ex-ante inspections were carried out compared to 437 in 2008 and 191 in 2007.

There is a steady trend for increasing the number of such inspections. This corresponds to the raised public awareness resulting from the activity of CPDP aiming at the implementation of the statutory obligation for registration of personal data controllers with respect to ensuring the required protection of the personal data subject to processing in the course of their operation.

3.2. On-going inspections

Although considerably fewer in number, the on-going inspections carried out pursuant to art.12, para.3 of LPDP are more complex in legal aspect. In 2009 the Commission carried out 29 inspections of this type compared to 27 in 2008.

According to the legislation these inspection are carried out at the request of interested persons and at the initiative of the Commission with respect to a monthly schedule for implementation of control activity adopted by the Commission.

3.2.1. Annual schedule for execution of inspections

In the beginning of 2009 CPDP adopted a Programme for carrying out on-going inspections at the initiative of CPDP for 2009. It is oriented to enhancing the efficiency of the control activity of the Commission based on its further administrative strengthening, improving the organization of control, elaborating the forms of providing consultations to personal data controllers and individuals. According to the criteria adopted in the programme the Commission appointed inspections of 21 personal data controllers operating in different sectors of the social economic life. As a result of these inspections 15 statements of findings were established and 5 mandatory directions were issued.

With respect to the accession of the Republic of Bulgaria to Schengen and the Schengen Information System (SIS) the on-going inspections in the following institutions were of great importance:

- Ministry of Internal Affairs – Consular Relations Directorate;
- Ministry of Interior – Specialized Directorate of Communication and Information Systems;
- Ministry of Internal Affairs – General Consulate of the Republic of Bulgaria in Istanbul, Republic of Turkey;
- Ministry of Internal Affairs – Embassy of the Republic of Bulgaria in Kishinev, Republic of Moldova;
- Ministry of Interior – Chief Directorate “Border Police” and Border Checkpoint Kalotina;
- Ministry of Interior – Contact Unit with respect to the Schengen Information System (SIS) (SIRENE Bureau) at Directorate of International Operative Police Cooperation;
- Ministry of Finance – Customs Agency.

As a result of these inspections guidelines were given ensuring the observance of LPDP and improving the measures for personal data protection. Training of officers from the respective administrations was conducted in the field of personal data protection.

The rest of the inspections scheduled in the Programme are in the process of closing due to their raised legal complexity and the larger volume of personal data subject to processing by the personal data controllers.

3.2.2. Sector inspections

A successful contribution for extending the range of topics of the inspections and their quality was achieved by means of the inspections initiated by CPDP in sectors Telecommunications and Educations. In their planning and implementation the Commission utilized the experience of the Spanish Agency for Personal Data Protection, granted through the EU project - "Twinning Light Project BG-2007-IB-JH-01 TL".

The third type of inspections involves the inspections carried out as per art. 12, para. 4 of LPDP, namely: ex-post inspections, which are carried out in order to check the implementation of a decision or mandatory direction of CPDP, as well as at its own initiative after an alert has been submitted.

In 2009 the Commission carried out 11 ex-post inspections compared to 19 inspections in 2008 and 19 in 2007 (see the enclosed chart in Fig. 5).

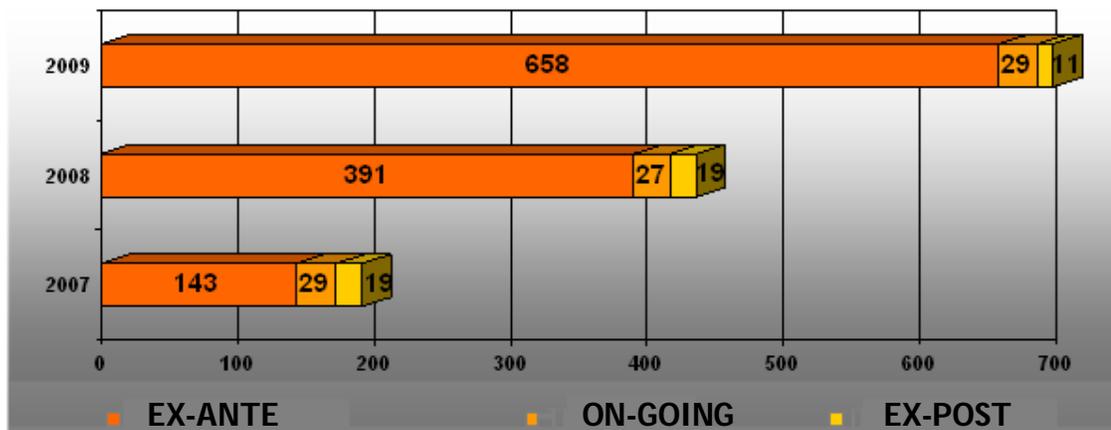


Fig. 5

With respect to the specific conditions of personal data processing, a differentiated classification has been executed by sectors. The following inspections by sectors were carried out in 2009 by CDDP in the course of its activity: (see the enclosed chart in Fig. 6)

- healthcare – 472

- social activities – 59
- trade and services – 39
- state administration – 34
- human resources – 17
- insurance – 15
- district and municipal administration – 12
- security – 13
- education – 11
- telecommunications – 6
- finance, etc – 6, etc.

The focus was placed on inspections of personal data controllers, who process personal data concerning health, sexual life or the human genome, revealing racial or ethnical origin; political, religious, philosophical convictions and membership in such organizations, or such data, the processing of which endangers the statutory rights of the individuals according to a ruling of the Commission.

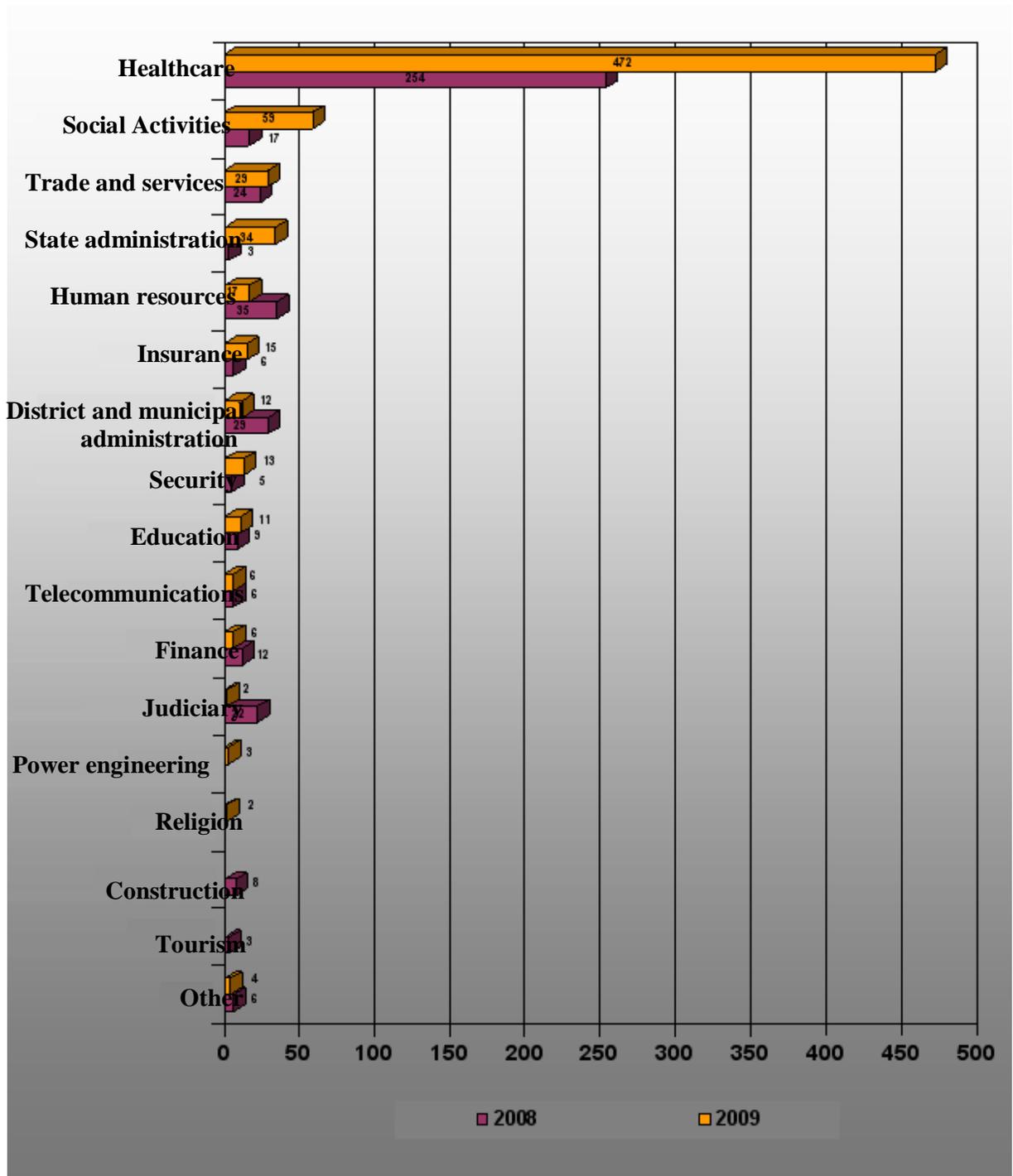


Fig. 6

3.3. Analysis of the administrative penal activity

According to the provisions of art. 42 of LPDP the ascertainment of violations, the issuance, appealing and execution of the penal rulings shall be implemented as per the order established with the Administrative Offences and Sanctions Act.

The acts for ascertaining administrative violations (AAAV) of provisions of LPDP is issued by a member of the Commission for Personal Data Protection or by officials duly authorized by the Commission. The penal rulings are issued by the Chairperson of the Commission for Personal Data Protection.

With respect to violations established by CPDP in 2009 total 32 AAAV were issued (compared to 15 AAAV in 2008 and 12 in 2007).

The most common violations of LPDP are as follows:

- infringement of the principles of lawful processing of personal data;
- infringement of the provisions concerning the registration of the personal data controller;
- infringement of the provisions concerning the measures for protection of personal data.

Total 25 penal rulings (PR) were issued compared to 6 in 2008 and 10 in 2007 (*the enclosed chart in Fig. 7*). Under the enforced 4 PRs the amount of BGN 10 000 was paid to the account of CPDP. In 2009 2 PLs were repealed by the court. As of the end of 2009 15 PRs were at the stage of court proceedings. The rest of the PRs are in the process of delivering, including through the Ministry of Interior.

The abovementioned statistical data indicate increase in the results of the administrative penal activity, both in absolute figures and with respect to its efficiency. The number of the executed AAAVs and issued PRs was increased. The number of the rulings repealed by the court is significantly reduced. This fact is due to the measures taken for enhancing the quality of the activities related to ascertaining infringements of LPDP and their documenting in conformity with the provisions of the Administrative Offences and Sanctions Act.

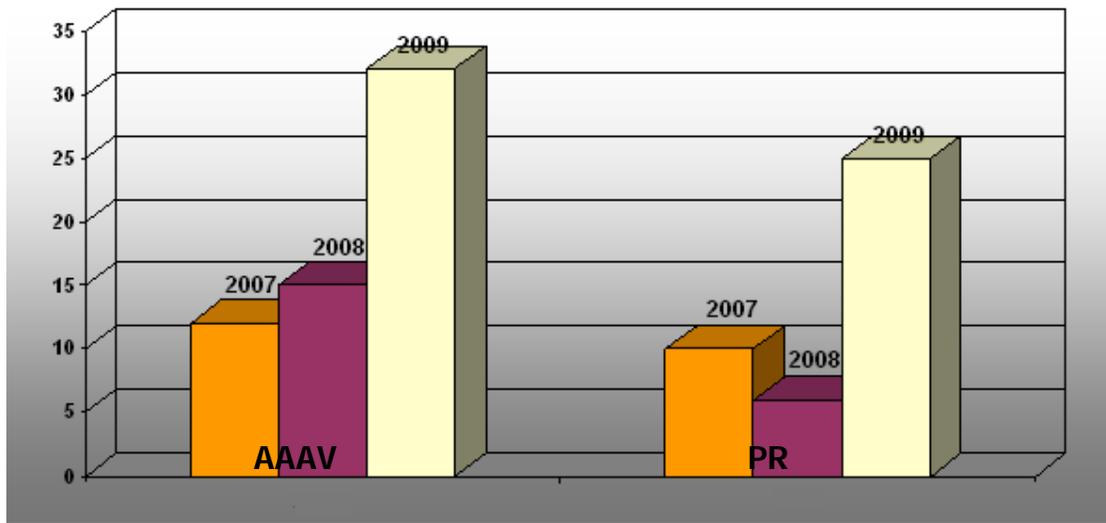


Fig. 7

With a view to the dominating trend of steadily increasing volume of inspections in the course of implementation the supervisory activity of CPDP it is necessary that the Commission should maintain corresponding personnel resource.

4. Implemented Projects

4.1. Twinning Light Project with the Spanish Agency for Personal Data Protection

At the end of 2008 with respect to a free financial resource from "Unallocated Package for Institutional Building for 2006" CPDP started the preparation of Twinning Light Project, oriented to improving the implementation of the legislation in the filed of personal data protection when carrying out sector inspections.

After the application procedure was carried out the Spanish Agency for Personal Data Protection was appointed as a partner under this project. The project was signed on April 7th 2009. The contract was concluded for 6-month term of execution and budget of EUR 87 151.65 and co-funding of EUR 3 420.

The project aimed at raising the efficiency of CPDP in the course of carrying out sector inspections, development of methodology for control, rules and procedures for its implementation in conformity with the basic principles for personal data protection.

The project was successfully completed within the operating schedule. All activities were carried out and the targets were achieved. As a result of the activities three documents were elaborated with respect to carrying out sector inspections - "Technology for carrying out sector inspections", "Plan for scheduled inspection in sectors Telecommunications and Educations" and "Guidelines with procedural descriptions for carrying out sector inspections", covering the following main points upon determining and execution of a sector inspection:

- Criteria for selection of sector inspection;
- Examining the applicable legislation;
- Preliminary research of the sectors included in the sector inspection;
- Planning of the sector inspection;
- Methodology for carrying out the sector inspection.

The project management was implemented in collaboration with representatives of the Ministry of Justice and the Ministry of Finance. The final report adopted by both parties was approved and presented to the members of Management Committee and entered in the Central Unit for funding and negotiating on October 16th 2009. Both parties expressed their satisfaction with the implementation of the project. The project coordination and finance management were executed at high professional level and no difficulties were encountered.

Undoubtedly, the activities lead to detailed knowledge of the operative procedures for supervision and control over the personal data controllers and the final result of this Twinning Project was the exchange of knowledge on the procedures related to the implementation of sector inspections.

4.2. Application for partnership in a twinning project

In 2009 CPDP prepared a project with proposal and took part in the application as a partner under Twinning Project *MN 09 IB JH 03: "Development of a Strategy for Personal Data Protection"* in Montenegro.

The main project objectives covered ensuring the implementation of the basic right of personal data protection, strengthening the collaboration with the European Union in this respect, as well as sharing good practices and experience.

The project aims at institutional building of Agency for Personal Data Protection in Montenegro and developing of conditions for its functioning, as well as introduction and implementation of harmonized legislation in the field of personal data protection.

5. Institutional Interaction

5.1. Agreements for collaboration

In 2009 the Commission for Personal Data Protection executed bilateral agreements for collaboration and interaction with the State Agency “National Security” (SANS), the Ministry of Interior and the Ministry of External Affairs. The agreements aimed at establishing closer cooperation between the aforesaid institutions in the field of personal data protection. The interaction involved coordination, exchange, storage and use of data and information, as well as setting up joint working parties and rendering expert and technical assistance.

On the grounds of the agreement executed between CPDP and SANS both institutions collaborated in accordance with their competences, exchange and store information upon mutual observance of their independence and powers in the field of the national security and personal data protection.

In accordance with the agreement for collaboration the fields of interaction between CPDP and the Ministry of External Affairs involve the application of global standards and international practices for personal data protection; coordination and participation in the operation of the institutions of the European Union and their working authorities; exchange of experience and good practices concerning the implementation of the European legal instruments. CPDP provides and the Ministry of External Affairs through its foreign representation offices is bound to transfer information to the public, concerning the right of access to personal data, as well as information concerning the right of appeal to CPDP. On its part the Commission renders support by giving competent opinions at requests submitted by the Ministry of External Affairs concerning particular cases from the consular practice with respect to different countries with a view to unifying the approach and developing uniform criteria for solving problems arising from the practice of the diplomatic missions or submitted by individuals.

The collaboration between the CPDP and the Ministry of Interior is carried out with respect to the coordination and participation in the operation of the institutions of the European Union and their working authorities in the field of protection of the personal data, exchanged in the course of police collaboration; studying, application and elaboration of the Schengen legislation and harmonization of the Bulgarian legislation with the Schengen acquis in the field of personal data protection.

In 2009 the Commission for Personal Data Protection and the Chief Directorate of Civil Registration and Administrative Services at the Ministry of Regional Development and Public Works executed operative agreement for submitting personal data from the National Database “Population” to the Commission for Personal Data Protection. The aim of the agreement was to facilitate the activities related to the implementation of the powers of the Commission under art. 10, it. 1 – 7 of the Law on Personal Data Protection.

With a view to the efficient exercising of its powers the Commission intends to execute operative agreements with other governmental institutions, maintaining informational databases.

5.2. Leading national authority under SWIFT

The Republic of Bulgaria supports the beginning of negotiations between the European Union and the USA for executing bilateral agreement concerning the submission of relevant data of financial messages, required for the purposes of fighting the terrorism and its funding. As a result of the meetings held at national level between representatives of Ministry of Interior, Ministry of External Affairs, Bulgarian National Bank, State Agency "National Security" and the Commission for Personal Data Protection and in accordance with the decision of CPDP of July 13th 2009, the Commission was appointed to be the leading authority for elaboration of the national standpoint with respect to the negotiations for executing the agreement.

The subject of the agreement involves the processing and transfer of financial data for the purposes of the Programme of USA for tracing the terrorism funding. The international agreement is grounded on the main principles for data protection, such as the principles for purpose restrictions, data proportionality and security. It thoroughly specifies the aims of data transfer and processing from the EU to the USA, whereas it is explicitly provided, that the right of privacy and the protection of personal data shall be observed. Specific measures for personal data protection were introduced, such as restricting the processing only for the purposes of the agreement, availability of preliminary information or evidence for the relation between the subject of data and terrorist activity or its funding, maintaining the submitted data in the conditions of secure physical environment aiming at avoiding unlawful access and restricting the access only to particular persons whose official duties are related to the aims of the agreement. The principal obligation was introduced that the American party should guarantee adequate level of protection of the data, used for the purposes of the agreement.

6. International Activity and International Collaboration

The well established and efficient collaboration between the authorities dealing with personal data protection in the EU member states guarantees the successful implementation of the obligation for exercising control on the processing of personal data and protection of the rights of individuals. With respect to its international activity in 2009 the Commission for Personal Data Protection took active part in the elaboration and coordination of a number of European acts in the field of personal data protection and the right of privacy, as well as in exchange of experience on essential issues.

CPDP participated in the meetings of the Working Party under art.29 of Directive 95/46/EC, which are held according to a preliminary executed schedule 5 times per year. Each year after the execution of a written voting procedure, whereas the representatives of the member states and Switzerland (which has a special status) have the right of one vote, the participants approve working papers (WP). The main paper which determines the priority issues with respect to personal data protection is the Working Programme. On February 18th 2008 the Working Programme 2008 - 2009 Article 29 Working Party was adopted, which involved the following priority fields:

- better implementation of Directive 95/46/EC;
- guaranteeing the protection of personal data upon their international transfer;
- guaranteeing the protection of personal data with respect to the new technologies;
- enhancing the efficiency of the Article 29 WP;
- utilization of PNR data;
- medical data;
- archives and privacy of the individuals;
- children and their privacy;
- developing a framework for inspection of personal data, used in the public and private sector with respect to the right of privacy;
- protection of data in the financial field;
- protection of data in the course of executing direct marketing;
- protection of data in the course of pre-court investigation.

6.1. Participation in the operation of authorities, working parties and subgroups

6.1. 1. Article 29 Working Party and its subordinate subgroups

Within the frame of Article 29 Working Party and the differentiated subgroups the Commission took active part in the operation of the groups in the field of Binding Corporative Rules, Standard Contractual Clauses, Privacy Protection and Personal Data of Children, Right of Privacy, subgroup "Personal Data Controller/Processor of

Personal Data and Applicable Law” and “Future of Privacy Law”, as well as the subgroup “Safe Harbour”

Active participation was taken in the meetings of the Joint Supervisory Authority of Eurodac. Eurodac is an European System for collecting biometric data, enabling the EU member states to identify the persons applying for refuge and those arrested upon unlawful entering the outer borders of the Community.

The aim of the Coordination Party under Eurodac is to exercise control over the type, scope, method of transfer and use of the information by the law enforcement authorities, as well as to protect the rights of the individuals with respect to their personal data.

In 2009 the Commission participated in the meetings of the Working Party dealing with police and justice, where the following main issues were discussed:

- bilateral agreements with the USA on the basis of the Prum Treaty. They are executed in order to enable the access to databases with DNA and fingerprints, which may raise risks with respect to personal data protection. The participants accounted for the different national experience and pointed out the requirement of the states that such type of agreement to be subject to ratification. Experience was shared on a number of cases related to the application of Prum Treaty, especially with respect to the transfer of data between the authorities of different states aiming at carrying out analysis, as well as experience related to the systems and procedures introduced with respect to personal data protection, such as:

- application of special procedures for exchange of DNA information;
- introduction of a system for determining the matches of data upon setting up search indicators prior to the execution of the transfer of data.

A catalogue for data protection was executed concerning the collaboration and supervision in the field of law enforcement in the EU. The catalogue provides information concerning the mechanisms for risk assessment at national level, describing the risk factors, on the basis of which the national authorities may carry out the assessment of the law enforcement process. The Final paper is to be ready for the meeting in 2010, when it is planned to be adopted. With this regard discussions were made concerning the use of the joint information systems, the possibility for carrying out joint inspections, the use of Eurocris system by the police authorities, development of list of clauses, which may serve as a common model by means of introduction of particular forms and opportunity for assessment of the practices and possibly introduction of notification in the event such risks are established. On the Bulgarian part the information for contact with the Commission for Personal Data Protection was provided, which is to be included in the Catalog in the part, concerning the rights of data subjects in case of violation of the regulations for personal data protection;

A questionnaire was filled in concerning the implementation of the Convention on cybercrime. When the results of the answers received at this stage under the supplied questionnaire it was established that there are problems with the introduction of the Convention. The Commission provided information concerning the legal introduction of the provisions in the Bulgarian legislation.

6.1.2. Joint supervisory authorities under Europol, Schengen and customs

This year CPDO participated in the meetings of the joint supervisory authorities under Europol, Schengen and customs as well. One of the tasks of the joint supervisory authorities is to investigate issues related to inspections carried out independently by the national supervisory authorities of the member states. The participants discussed the necessity of development of more harmonized approach for implementation of tasks at national level.

The joint supervisory authority under Europol supervises the activity of Europol and guarantees that this activity conforms to principles of data protection underlying the Convention for Europol. After the Europol executed operative agreements for exchange of personal data in the field of law enforcement with a number of third states and institutions, it was established that with a view to the data protection it is better to carry out exchange of information and experience between the authorities for personal data protection that supervise the transfer and the further processing of personal data in this context. A standpoint was adopted concerning the level of personal data protection in Columbia and Macedonia, as well as the possibility for launching negotiation on the transfer of personal data from Europol.

The joint supervisory authority on customs-related issues continues to work, dealing with all aspects of management of the customs and the established information systems.

The 45th meeting of the international Working Party on data protection in Telecommunications was carried out in Sofia at the invitation of CPDP. The discussions covered the so called E-Call Initiative and the latest innovations in the technology for their implementation, as well as a review of the opinions on the data protection within this sector. The problems related to data protection and copyright protection in peer-to-peer (P2P) networks were examined, as well as the special type of technology for inspection of the contents of the electronic communications, created especially to prevent the unauthorized access to data. One of the papers adopted by the Working Party during its two-day meetings was entitled "Sofia Memorandum". It is a report with essential recommendations to the electronic systems for toll collection aiming at protection of drivers' personal data.

During the period under review a meeting of the Committee under art.31 of Directive 95/46/EC was carried out. The discussions covered a draft of Decision of the European Commission for standard contractual clauses concerning personal data transfers to persons performing their processing, located in third states (from personal data controller to data processor) and the repeal of Decision 2002/16/EU. The most essential aspect in the draft decision is the introduction of the so called cascading system – the data processor should guarantee that all subcontractors down the chain are bound by the same standard contractual clauses which are binding for it.

6.1.3. Participation in international forums

An important forum for exchange of ideas and experience and searching for common approach to solving analogical cases is the annual organization of seminars on legal cases, related to personal data protection. For the purposes of the seminars

the supervisory authorities prepare cases from their practice and the participants are expected to make comments in accordance with their applicable national legislation.

At the initiation of the Chairperson of the Rumanian Supervisory Authority for Personal Data Protection and the Rumanian Association of Direct Marketing representatives of CPDP took part and made presentation in the conference on the subject matter of "Personal Data Protection in Direct Marketing".

Representatives of CPDP took part in the 11th Meeting of personal data authorities from Central and East Europe held in Rumania. Subject of discussion was personal data protection and the new technologies, documents for digital identification and processing of the personnel's data.

In April 2009 a Conference of the Commissioners of the European data protection authorities was held in Edinburgh, Scotland. The discussions covered the issues of better understanding and realization of privacy-related risks, more effectively exercising of the rights, raising the data protection in the public sector and business, creating awareness of the privacy as a part of the public interests and as a component of the security.

Representatives of CPDP took part in the 31st International Conference of the authorities for personal data and privacy protection on the subject matter of "Privacy: Today is Tomorrow".

6.2. International collaboration

The international collaboration carried out by the Commission for Personal Data Protection is a constant process involving continuous exchange of information, experience, standpoints, opinions or analyses of issues related to personal data protection in global aspect. The two basic aspects of the international collaboration are bilateral collaboration with other authorities for personal data protection and replies to international requests.

6.2.1. Collaboration with other authorities for personal data protection

In response to the invitation for assistance in the field of implementation of Schengen acquis within the period of November 26th – 27th 2009 a meeting was conducted with representatives of the Slovakian authority for personal data protection. Presentations were made and discussions were carried out on the issues concerning the changes occurred in the Slovakian authority after the accession to Schengen, including the training of the officers and raising their competence. The participants shared experience on carrying out inspections in accordance with the Convention applying the Schengen Agreement. The Slovakian representatives presented to CPDP their practice with respect to their interaction with other authorities related to data protection upon exchanging information on the Schengen

Information System and their institutional interaction with other national authorities with competences on Schengen.

6.2.2. Inquiries from other supervisory authorities for personal data protection, working parties and subgroups and foreign individuals

The inquiries filed at CPDP are one of the main sources of information about the trends for development of the separate aspects of personal data protection and their significance, as well as they constitute a basic instrument for carrying out efficient collaboration with the EU authorities, the other institutions for personal data protection, the foreign individuals and organizations.

The largest is the volume of the requests submitted to the Commission from the other authorities for personal data protection, followed by inquiries from the European Union and other organizations for personal data protection, as well as from foreign individuals and personal data controllers (see the Table).

| Direction for receipt of international requests | Number |
|--|---------------|
| European Union | 30 |
| Other authorities for personal data protection | 45 |
| Other organizations or individuals | 25 |

After the accession of the Republic of Bulgaria as an European Union member state the representatives of CPDP in the Article 29 Working Party were given the rights to vote and with this respect documents are sent subject to written voting procedure prior to their final adoption. This procedure is of great importance for the adequate participation and protection of the national interests in the field of personal data protection, as each full member has a voting right by means of which they may unambiguously show their support and disagreement with the drafts of the working papers offered.

7. Activities Related to the Assessment of the Republic of Bulgaria on the Appropriate Application of the Schengen Acquis and Readiness for Exercising Control on Personal Data Processing in SIS

In September 2007 the Republic of Bulgaria deposited to the General Secretariat of the Council of the EU its declaration for readiness for launching the assessments under Schengen as from January 1st 2008. Through this declaration the Republic of Bulgaria declared its readiness to complete its preparation for full implementation of the provisions of Schengen acquis with a view to eliminating the control on its internal borders in 2011. The protection of personal data is one of the fields subject to inspection.

In its capacity of a national authority which analyzes and exercises full control on the observance of the regulatory acts in the field of personal data protection, CPDP is one of the main institutions of the Republic of Bulgaria, responsible for the introduction and implementation of Schengen acquis.

On April 27th and 28th 2009 representatives of the European Commission, the Council of the European Union and Schengen states members carried out the first inspection in the field of personal data protection with respect to the readiness of the Republic of Bulgaria for accession to Schengen. The inspecting team consisted of nine experts, representatives respectively of EC, the Council and Belgium, Germany, Spain, Slovakia, Slovenia, Hungary and Sweden, managed by the representative of Czech Republic – the country governing the EO at that moment.

The preparation for the implementation of the inspection covered the elaboration of a preliminary plan, making a self-assessment with respect to the personal data protection in the Republic of Bulgaria together with the Ministry of Interior and with the participation of experts from the EU member states, invited by the Bulgarian party.

During the preparation about this inspection and for the purposes of the National Schengen Information Systems (N.SIS) and the Schengen Information Systems (SIS) in 2009 the Commission for Personal Data Protection carried out inspections in: Ministry of Internal Affairs – Consular Relations Directorate; Ministry of Interior – Specialized Directorate of Communication and Information Systems; Ministry of Internal Affairs – General Consulate of the Republic of Bulgaria in Istanbul, Republic of Turkey; Ministry of Internal Affairs – Embassy of the Republic of Bulgaria in Kishinev, Republic of Moldova; Ministry of Interior – Chief Directorate “Border Police” and Border Checkpoint Kalotina; Contact Unit with respect to the Schengen Information System (SIS) (SIRENE Bureau) at Directorate of International Operative Police Cooperation at the Ministry of Interior; Customs Agency at the Ministry of Finance; Ministry of Interior – ex-post inspection for ascertaining the implementation of the mandatory obligation issued by CPDP with respect to executed video surveillance.

The inspections arranged at the Research Institute of Forensic Science and Criminology at the Ministry of Interior and at the State Agency “National Security” are in the process of closing.

On April 27th an inspection was carried out in the Commission for Personal Data Protection. The inspecting team was given the legal framework for personal data protection in the Republic of Bulgaria, the institutional position, functions and powers of CPDP, the rights of individuals in accordance with the regulations in force. Particular attention was paid to the control powers of the commission and the inspections carried out over personal data controllers.

On April 28th the inspecting team examined the protection of data within the frame of the Ministry of Interior and in the occasions of issuance of visas by the Ministry of Interior. Subject of inspection were the information funds of the Ministry of Interior, the access to them and the method of data processing, the legal regulation for data protection, the respective organizational structures. In the main computer center of the Ministry of Interior a presentation was made of the elements of informational security upon the automated processing – security measures, access control and data storage. Data processing and protection in the process of building SIS-2 was also presented. The inspecting team examined the physical and logistic protection, as well as with the methods of carrying out access to the Schengen information system in the event of making consultations with respect to visa issuance.

As a result of the inspection a report was elaborated concerning the readiness of Bulgaria for the accession to Schengen. The conclusions of the inspecting team are positive: "The main process of approval of harmonization of the national legislation for protection of personal data has been completed, the international acts in this field have been ratified and are part of Bulgarian legislation, they are implemented and the respective provisions are applied, reflecting the principles of the EU and international acts, and the Convention No. R (87) 15 of the Committee of Ministers of September 17th 1987 regulating the use of personal data in the police sector".

Additional recommendation were made for raising the awareness with respect to the rights of individuals for access to data, correction, erasure, complaints, etc., including awareness with respect to the role and competences of CPDP, as well as enhancing the collaboration at national and international level with the respective institutions in the field of personal data protection. Bulgaria was invited to inform the Commission about the development in the field of personal data protection and to present reports containing statistical data about the exercising the rights on the part of the individuals and the activities of CPDP, some legislative changes were recommended, related to the right of access of individuals to their information which is subject to processing. On these grounds the Commission will make the decision whether another inspection is necessary.

In order to implement Recommendation R (87) 15 and the commitment to complete this by the end of 2009 an intradepartmental working party was established including representatives of the Ministry of Interior and CPDP. The task of the working party was by December 31st 2009 to elaborate the draft of the necessary regulatory changes with a view to the full implementation of the recommendation. The Schengen Evaluation Commission made specific recommendation with respect to the fact that data subjects should be informed about the storage of data related to them immediately after the subject of police actions cannot be affected. Another recommendation refers to the implementation of regular inspection of data quality.

The working party finished its work and put forward amendments of Instruction No.Iz-381/09 for the method of personal data processing in the Ministry of Interior. The Instruction amending and supplementing Instruction No. Iz-381/09 is already signed by the Minister of Interior and its promulgation in State Gazette is forthcoming.

An interdepartmental working party was established within the Commission for Personal Data Protection for making the preparation for legislative amendments of the Law on Personal Data Protection (LPDP). The party is still working. Upon formulating the amendments and the supplements the recommendations of the mission for Schengen evaluation are taken into account concerning the fact that particular provisions in the law may lead to legal insecurity of the individuals. Specific recommendations were made with respect to art.28, para.2 of LPDP, regulating that the individuals may exercise their right of free access to the information related to them once in 12 months. The aim of the drafter amendments is that the personal data controller should provide such information free of charge.

In 2009 CPDP took part in the Schengen Evaluation Group of the EC. Legislative initiatives of the European Commission were discussed, such as the proposal for Regulation of the Council concerning the establishment of a mechanism for evaluation in order to check the implementation of Schengen acquis and a proposal for Resolution of the Council concerning the establishment of a mechanism for evaluation in order to monitor the implementation of Schengen acquis. The main purpose of these proposals was to raise the efficiency of the evaluation under Schengen and establishment of up-to-date and adequate legal frame.

The issue of the accession to Schengen is a question of a particular interest due to the forthcoming introduction and implementation of the Schengen Convention and the Second Schengen Information System (SIS 2). A special management manual was elaborated entitled SIRENE which covers beside the parameters of the collected information, the establishment of offices with the same name in the EU member states which have signed the agreement introducing Schengen acquis and these offices shall make contact between the different law enforcement authorities. In this relation an information campaign was launched aiming at introducing the mechanisms of activity of SIS 2 by means of the development of information materials to be distributed among the interested authorities, organizations and individuals.

The Bulgarian state periodically presents information on the progress achieved with respect to the forthcoming accession to Schengen.

8. Administrative Capacity and Financial Status

8.1. Human resources

The new Rules for the activity of the Commission for Personal Data Protection and its administration (hereinafter referred to as the "Regulation") made amendments with respect to the structure of the Commission. Pursuant to art.14 of the Rules the managerial organization of the Commission was changed. The change involved closing of four directorates of the former structure and opening of new five directorates as of June 1st 2009 as follows:

- General administration with two directorates: "Resource Management" and "Administrative servicing";
- Specialized administration with three directorates: "Legal and International Activity", "Legal Proceedings and Supervision" and "Information Funds and Systems".

The total number of the staff of the new structure is 81 officers (on the pay-roll), including the voted positions: Chairperson and members - 5 officers (on the pay-roll), 1 officer (on the pay-roll) – Chief Secretary, 1 officer (on the pay-roll) Financial Auditor, or:

| | |
|----------------------------|-------|
| Voted positions | - 5 |
| Chief Secretary | - 1 |
| Financial Auditor | - 1 |
| General administration | - 26 |
| Specialized administration | - 48. |

As of the end of 2009 the number of the officers in the Commission for Personal Data Protection came to 57 officers (on the pay-roll), 39 (on the pay-roll) of whom were employed under official and 18 under labour contracts.

In 2009 10 officers were employed under official contracts, three of whom were under agreements as per art. 81a of the Civil Servants Act and 6 officers left their positions. 4 officers were employed under labour contracts, 6 of whom left their positions.

In October 2009 the Commission announced a competition for the occupation of 19 vacancies according to the Ordinance for conducting the competitions for civil servants for different position in the directorates of the general and specialized administration. As a result of these competitions at the beginning of 2010 9 officers were employed under official contracts.

8.2. Training

The training of the officers of the administration corresponds to the policy of the Commission for raising the professional qualification and re-qualification of the officers, and for enhancing their knowledge, skills and competences.

The training of the officers from the administration is provided with funding from the state budget, as well as other sources, which may be funds under projects and programmes.

The training of the officers of CPDP is arranged as follows:

- training at the Institute of Public Administration;
- external training, arranged by another institution (Center for European Training).
- internal training – arranged by the Commission on particular topics and modules, seminars, including conducting twinning projects intended for improvement of the work organization and development of the professional skills of the employees.

8.3. Financial status

By means of the State Budget Act of the Republic of Bulgaria for 2009 the budget of the Commission for Personal Data Protection was approved to the amount of BGN 3 612 000 as a first level spending unit. According to art.17 of the same act 90 per cent of the approved expenses come to BGN 3 250 800.

After the reduction of the expenses on the budget of CPDP by BGN 318 567 in conformity with the Decree of Council of the Ministers 196 dated August 11th 2009 on imposing additional measures for limiting the non-interest costs and transfer under the National budget for 2009, the revised budget of the Commission for 2009 is to the amount of BGN 2 932 233.

The expenses made ensured the entire activity of the Commission for Personal Data Protection in 2009.

9. Priorities of the Commission for Personal Data Protection for Year 2010

Among the main objectives and tasks of the Commission for 2010 is the successful completion of the process of preparation for the implementation of Schengen acquis and sustainable implementation of the criteria according to which the Republic of Bulgaria is evaluated with respect to its readiness for accession to Schengen.

Key permanent priority of the institution is the implementation of complete and efficient information-educational activity among different target groups in the society. An important task of the Commission with a view to achieving and maintaining adequate level of public awareness of the Bulgarian citizens concerning the national and European regime for personal data protection and their rights and obligations under LPDP, is the arrangement of large campaigns, forums and educational initiatives among personal data controllers, students and graduates, as well as among other parts of the population. The focus of the information-educational activity should be placed on the protection of the privacy of minor individuals.

Aiming at optimizing the supervisory activity of the Commission related to personal data processing and the extension of the scope of operating control on the entire territory of the country, CPDP considers as its essential task the establishment at its administration of mobile groups for carrying out inspections on the observance of the law.

The Commission takes into consideration the circumstance that the availability of its representatives in the district centers in the country will significantly enhance the efficiency of its supervisory and educational activities. It will lead to considerable increase of the guarantees for the observance of the rights of individuals upon the processing of their personal data. One more essential form of these guarantees is the strengthening of the institutional interaction with the representative organizations of the large personal data controllers in the Republic of Bulgaria.

The annual report for the activity of the Commission for Personal Data Protection in 2009 was adopted by a decision of the Commission at a meeting held on January 27th 2010 (Protocol No.3).

Chairperson:

Veneta Shopova

Members:

Krasimir Dimitrov

Valentin Enev

Mariya Mateva

Veselin Tselkov