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## Protection of Personal Data in Kosovo

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### Background

This paper aims to demonstrate the necessity of the implementation of the Law on the Protection of Personal Data in Kosovo (LPPD). The Law on the Protection of Personal Data is related to several key legislations from different areas such as human rights protection, criminal justice, anti-corruption, telecommunications, civil registration, the private sector and others. Thus, there is a great concern that some of these legislations are outdated and there are also concerns raised for the potential lack of harmonization with this law. The paper points out that some key processes have started recently without considering the Law on the Protection of Personal Data. There are only few individuals who are aware of the existence of this law and the rights of citizens deriving from it. Moreover, the State Agency for the Protection of Personal Data (which is responsible for the implementation of the Law on the Protection of Personal Data) has not been fully functionalized yet.

This is the second KCSS research paper which elaborates the developments in the Kosovo's justice sector. It is launched within the scope of KCSS strategic vision for 2011-2013 in expanding the research capacities also in a justice related matters in order to complement the research activities in the security issues. The team would like to acknowledge the support of Open Society Foundation – Think Tank Fund, for making possible the research and release of this publication. Apart from that, it is worthwhile mentioning the overall institutional support of the Think Tank Fund in strengthening the capacities and skills of KCSS researchers.

### Methodology

The methodology used for drafting this policy paper is predominantly qualitative research based in the desk research of legal framework, reports, journals and media articles, face to face interviews as well as participatory observations.

### Why to Protect Personal Data?

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**T**he protection of personal data (PPD) is an important international standard which is becoming a daily issue for most democratic countries. The necessity for PPD has come as a result of the accelerated development of information technology. Compared to the traditional form of data collection and protection which included mainly hardcopy formats, this new technology has completely innovated the concept of data collection which is now mainly electronic. Indeed, nowadays the new electronic devices such as computers, internet connection network, video and audio recording technology etc. play a prime role in the process of personal data collection.

What favors this technological development is that the market price for these electronic devices has rapidly dropped since they were first introduced. An easier access to these kinds of equipment has resulted in an increasing number of actors involved in the data collection process both in the public and the private sector. Indeed, nowadays with new technology it is becoming very easy and extremely cheap for any natural or legal person to create databases and setup a form for collection of personal data.

Due to the dynamic communications and interaction between people, now it has become almost impossible to avoid the exposure of personal data, be it through civil

registration (ID cards, passports, birth certificates), business registration, submitting application forms, CVs, registering in different social networks, opening bank accounts or e-mail accounts, E-marketing, registering while entering buildings, conference registration, boarder checking, police control, camera monitoring, and many more. Despite the many positive aspects brought about by the spread of more time-efficient technology that significantly facilitates data collection, this trend has also had a negative impact in the area of PPD in the sense that it opens the possibilities for exposing important private data which might be detrimental to some individuals or companies.

Kosovo and its citizens are no exception vis-à-vis these developments and, while several challenges remain with regards to state building and economic welfare, one should not disregard the need to address the fundamental human rights issue related to the protection of private data and to privacy in general. At the very least, the fact that a relevant law has been adopted in Kosovo requires thorough analysis from independent researchers to raise awareness for this issue. In other words, based on the contemporary perspective, the protection of personal data is as important as other human rights issues in Kosovo.

### >>> **The importance of PPD in the context of Kosovo: Path towards European integration**

Observing the PPD domain from a European Integration perspective, it is worth noting that the protection of personal data strings higher on the agenda of the European Union (EU)<sup>1</sup>. *The Directive 95/46 EC adopted on 24<sup>th</sup> October 1995 on the protection of individuals with regards to the processing of personal data and on the free movement of such data* which is still in force, represents an attempt by the European Commission to harmonize the protection of personal data in the entire European Union (EU). In accordance with this Directive, EU Member States shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data without neither restricting nor prohibiting the free flow of personal data between the Member States (Article 1). The Directive also specifies

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<sup>1</sup> Karen Mc Cullagh, A study of data protection: harmonization or confusion?, University of Manchester, 2006,  
<http://www.bileta.ac.uk/Document%20Library/1/Data%20protection%20-%20harmonisation%20or%20confusion.pdf>

that each Member State should adapt the national provision pursuant to the Directive (Article 4). The Directive is also important when it comes to addressing the issues related to the protection of human rights. In this regard, this legal document highlights the sensitivity of revealing certain data such as racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health or sex life and conceded that data concerning offences and criminal conditions may only be processed under certain strict conditions (Article 8).<sup>2</sup>

In order to demonstrate the importance of embedding the principles of data protection, one needs to highlight the relevance given to this domain during the process of visa liberalization for the Western Balkan countries. In fact, one of the main requirements set out by the Roadmap for a Visa Free Regime referred to the issue of machine readable biometric travel documents in compliance with ICAO (International Civil Aviation Organization) and EC (Council Regulation) standards and the gradual introduction of biometric data, including photo and fingerprints (Roadmap on Visa Free Regime, 2009). Apart from that, some countries have been required to adopt specific legislation (if none existed so far) and, if such legislation already existed, to establish an Agency for the Protection of Personal Data.

Hence, also in the Kosovo case, the protection of personal data is important in the process of European integration. There are different international and local reports that in one way or another highlight the deficiency in this sector. The annual EU Progress Report in particular stated that Kosovo has achieved only limited progress in the area of personal data protection.<sup>3</sup> Nonetheless, the only steps that has been taken so far by Kosovo institutions in this area is the adoption of the Law on Personal Data Protection and the appointment by parliament of the Supervision Council of State Agency for Protection of Personal data. The fact that there only limited progress in issuing the biometrical passports suggests that Kosovo has made very limited progress in achieving EU standards required from Kosovo to join the visa liberalization process.

### **Main Obstacles in Implementing the PPD in Kosovo**

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<sup>2</sup> Directive 95/46 EC of European Parliament and of the Council adopted on 24<sup>th</sup> October 1995 on the protection of individuals with regards to the processing of personal data and on the free movement of such data.

<sup>3</sup> Kosovo 2010 Progress Report, European Commission, Brussels, 9 November 2010, SEC (2010) 1329

**D**espite the fact that the Law on the Protection of Personal Data (LPPD) has been approved, the current state of affairs regarding its implementation is rather concerning. There is a long list of indicators that point to the difficulties related to this domain, which may be divided into four categories:

- Legal obstacles;
- Lack of implementation;
- Lack of professional capacities;
- Absence of awareness among the citizens.

### **Legal obstacles**

As mentioned previously, the LPPD was adopted by the Kosovo Assembly only in 29<sup>th</sup> April 2010. The law was drafted with the support of international experts and with very limited inclusion of local input. This raises concerns that the law may not reflect the local context in a sufficient way.

While implementation of the law is suppose to start in parallel to the process of functionalizing the State Agency for the Protection of Personal Data (SAPPD), there are also other potential legal deficiencies, since certain laws which are directly or indirectly related to the LPPD have not been harmonized with it. Most of these laws have been adopted during UNMIK period<sup>4</sup>, and at that time the protection of personal data was not a subject of discussions. These laws include the Criminal Code, the Criminal Procedural Code, the Law on Telecommunications, the Law on the Collection of Statistical Data, the Law on Kosovo Population and the Housing Census.

### **Lack of Implementation**

The process of implementation of LPPD is still at an early stage, although the SAPPD was supposed to be established at the latest by November 2010. However, due to the latest parliamentary crisis and the extraordinary central election, the process was prolonged until the end of June 2011 when the Supervision Council of SAPPD was finally appointed by the parliament.<sup>5</sup> However, this does not mean that the Agency is ready to exercise its role on pushing the implementation of the law. Given the fact that SAPPD is supposed to have a leading role on overseeing the process of implementation of the law, without fully functionalizing the Agency

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<sup>4</sup> Some of laws are dating back even form the former Socialist Republic of Yugoslavia period. According to the Director of the Department of Population Statistics, the Statistical Institute of Kosovo functions based on legislation adopted from the period of Former Yugoslavia.

<sup>5</sup> Interview with Nurë Çeku, Senior Officer, Kosovo Assembly, Committee for Internal Affairs, Security and KSF, 16 May 2011.

(recruiting and training its staff), any expectations for the agency to exert this role appear rather unrealistic.

Research which was conducted during period May - July showed that despite the fact that the Agency is not yet functional, there were some important processes that started recently containing a tremendous number of personal data without a set of protection standards and with a lack of scrutinizing mechanisms. Among the most important processes of data collection which was conducted during 2011 without any supervision by independent mechanisms were the Census of the Population and of Properties and the Registration of Mobile Phone Numbers.

The **Census** was carried out from 1<sup>st</sup> to 15<sup>th</sup> of April 2011 with the intention of registering the citizens, households, and properties and to collect other important information that could be used for these sorts of data collections in the future. While the process was organized according to the Law on Kosovo Population and Housing Census, there was no independent mechanism to oversee this process which makes the Census quite questionable (Sojeva, 2011). What is even more concerning is that although important data was collected throughout the Census, during the processing of this data there was no sign that LPPD was consulted. It is even more concerning that the key officials leading the process of census were not aware of the existence of the law and the rights to protection of personal data deriving from it.<sup>6</sup>

A similar situation occurred during the process of the **Registration of Mobile Phone Users** which started in October 2010 and ended on 28 February 2011. This process was run in compliance with the Regulation on the Registering of Mobile-Phone Users which entered on force on 1 October 2010 under the supervision of the Telecommunication Regulatory Authority. However, when asked about the LPPD, none of the officials of the Telecommunication Regulation Authority involved in the registration process were aware about the existence of this law (Ajeti, 2011). It is worth mentioning that there were great concerns expressed by the citizens and many of them hesitated to provide the required data due to the fear that their personal data may be subject to misuse.<sup>7</sup>

### **Lack of professional capacities**

When it comes to professional capacities for the implementation of this law, there is almost a complete lack of domestic expertise in the area of PPD.

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<sup>6</sup> Interview with Ibrahim Shabani, Chief of Statistical Office of Kosovo, 16 May 2011.

<sup>7</sup> While discussing with many citizens working on different positions they expressed their deeper concerns that the census could have negative effect for them. They were afraid that information collected may be misused due to the fact that there was no reliable independent mechanism to monitor the data processing.

Furthermore, almost none of the involved actors in the areas related to personal data collection were familiar with the existence of LPPD. This may be understandable due to the fact that the law was recently adopted and it is a new trend for the region. However, the lack of expertise also concerns the Ministry of Internal Affairs (MoIA) officials, which is the sponsor of LPPD. Thus, the ministry had to outsource to an international expert the drafting of the LPPD. The problems with the expertise are prevalent also among the Members of the Parliamentary Committee on Internal Affairs and Security, despite their responsibility in scrutinizing the progress including the appointment of the Executive Board of the Agency (Çeku, 2011).

### **Lack of Awareness**

The protection of personal data in Kosovo is guaranteed by the Constitution. Article 36 protects the right to privacy and guarantees the protection of personal data, whereas Section 3 explicitly specifies that the secrecy of correspondence, telephony and other communication is an inviolable right. This right may only be limited temporarily by a court decision if it is necessary for criminal proceedings or the national security of the country as defined by law. Most of the citizens are not informed about this basic civil right that touches their personal integrity. Moreover, there is a lack of awareness of the role of implementation of legislation in the area of the PPD. Citizens' exposure to the possible violation of their right to privacy through unauthorized recording, collection and processing of data is therefore highly problematic. The lack of the implementation of the law is responsible for the limited to in-existent awareness not only in public sector, but especially in the private sector as well as among ordinary citizens in Kosovo. The role of the SAPPD among others should be to advise the public and private sector on data protection and also to inform the public about issues and developments in the field of data protection.

The role of civil society is to serve as an alternative expertise and, for this purpose, its role was almost in-existent, despite the ad-hoc involvement of some NGOs.<sup>8</sup> However, the proactive involvement of NGOs is key in order to advocate for the rights of citizens in protection of their personal data as an important dimension of human rights.



## **Recommendations**

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<sup>8</sup> Kosovar Center for Security Studies is amongst the few NGO's which have been actively involved in PPD policy making, starting from participating into the process of drafting the law.

Considering that the Assembly of Kosovo is the among the most important actors overseeing the implementation of PPD, most of recommendations are addressed to Agency, Assembly Committee for Internal Affairs and Security, and other relevant institutions. Among the key recommendations are:

### **State Agency on Protection of Personal Data**

- The Agency should go on and establish its capacities as soon as possible.
- The Agency needs to review the occurred data collection processes and assess whether there was any misuse of personal data while processing.<sup>9</sup>
- The Agency should start as soon as possible to inform institutions as well as citizens as individuals about the trends and importance of the protection of personal data.

### **Assembly Committee for Internal Affairs and Security**

- There should be combined efforts of the Kosovo Assembly, the Government and other involved actors (data providers and collectors) in order to start promptly with the process of implementation of the Law on the Protection of Private Data;
- Although by the end of June 2011 the State Agency for Protection of Personal Data has established its executive board (Kosovo Assembly, 2011), the assembly should push this mechanism to operational as soon as possible, in order to start exercising its tasks according to the law;
- The harmonization of legislation should take place, particularly with regard to those laws which have been adopted prior to the declaration of independence (Criminal Code, Criminal Procedural Code, Law on Telecommunication, etc);

### **Government of Kosovo**

- Although it is more than a year ago that the MoIA promoted the preparation for the process of issuing biometric passports, this process has not started yet due to the parliamentary crisis that occurred from the end of last year until April 2011. Therefore, the government should launch the biometric passports as soon as possible. This would enable the implementation of an important part of the Law on the Protection of Personal Data which is also related to visa liberalization.

### **Civil Society**

- The CSOs and Media should be more actively engaged in promoting the importance of

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<sup>9</sup> This recommendation refers to the: Census and Registration of Mobile Phone Owners.

implementation of PPD. This could be done through publishing studies, reports, organizing campaigns, news reports, public debates, etc.

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