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S U M M A R Y



**The Office for Personal
Data Protection
of the Czech Republic**

2002 was a very important year for personal data protection in the Czech Republic. Under the influence of global events, the aspect of personal data protection became so widely recognized that there was no need to persuade the public as to why personal data should be protected, but rather it was necessary to explain how such data can be protected. The Czech Republic declared that respect for human rights is amongst its permanent priorities. After ratifying Council of Europe Convention No. 108 in 2001, in April 2002 it also signed the Additional Protocol to this Convention and initiated the legislative process for its ratification.

The international evaluation of the quality of personal data protection in the Czech Republic culminated in the evaluation mission of the European Commission - the Peer Review, which assessed the work of the Office. The final report of this mission placed the Czech Office at the top spot amongst the candidate countries and the countries of Central and Eastern Europe.

The search for the best approaches to performance of control and supervisory activities of the Office was greatly complicated by the conditions under which the Office performed its work: the provisional nature of its seat, which limited the potential to provide adequate personnel for performance of control and legal and legislative activities.

The floods in August also affected the activities of the Office. The Office expected that the new Government would address the issue of its seat; however, the catastrophic consequences of the floods changed the priorities of the Government in drawing up the budget. Thus, the uncertainty in addressing the issue of final location of the Office at the end of the year affected the personnel stabilization process.

The fact that, at the end of the year, the Office managed, through its own efforts, to find and rent premises that were suitable for its work and for the required personnel supplementation, gives rise to optimistic prospects for the year 2003 and subsequent years.

The activities of the Office in 2002 were also affected by establishment of the new Ministry of Informatics: The transfer of competence in the area of electronic signatures to the new Ministry caused that the Department for Electronic Signatures came into the structure of the Ministry of Informatics in January 2003.

In 2002, activities in the area of electronic signatures were concluded by granting one accreditation to act as an accredited certification service provider.

However, some of the goals of the Office for 2002 were not fulfilled. This was particularly true in the area of public awareness amongst the younger generation, in the area of study and application of European experience, in creation of legislation or in expediency in dealing with complaints of citizens, which was also a consequence of limited personnel of the Office.

It is very important for the work of the Office that all transitional periods allowing for certain deviations from the principles of personal data protection laid down by the law expire in 2003.

Thus, the last year before accession of the Czech Republic to the European Union will bring further demanding tasks for the Office.

Activities of the Office in the Legal Area

The Personal Data Protection Act was amended several times in 2002 at the instigation of the Parliament of the Czech Republic:

Act No. 450/2001 Coll. supplemented the Personal Data Protection Act with § 17a which regulates the conditions and procedure of the Office in cases where it establishes, in relation to a control of personal data processing on the basis of a registered notification, violation of the conditions laid down by the Personal Data Protection Act. Furthermore, § 30 was amended by adding new paragraphs 4 and 5 in that the salary relations and certain related rights of the President of the Office and some related rights of inspectors of the Office were newly regulated.

Act No. 107/2002 Coll. amended § 3 (6) in that processing of personal data by “the bodies competent to disclose files established through the activities of the former State Security Service pursuant to the special law, unless this special Act lays down otherwise” was added amongst the cases of personal data processing that are not subject to the provisions of § 5, 9, 11, 16 and 27 of the Personal Data Protection Act.

Act No. 309/2002 Coll. amended § 30 in that paragraphs 5 and 6, providing for the manner of legal regulation of the salary relations of employees of the Office, except for its President and inspectors, and also the manner of legal regulation of reimbursement of travel expenses, were omitted.

Act No. 310/2002 Coll. amended § 3 (6) (d) in that processing of personal data by the National Security Office, not only in carrying out security checks, but also “in verification of the security qualification of natural persons pursuant to the special legal regulation” was included amongst the cases of personal data processing that are not subject to the provisions of § 5, 9, 11, 16 and 27 of the Personal Data Protection Act.

Act No. 517/2002 Coll. In relation to establishment of the Ministry of Informatics, the competence of the Office was changed in the area of electronic signatures. The former competence of the Office in this area was transferred to the Ministry of Informatics with effect as of January 1, 2003 and it was therefore necessary to make *legislative changes in § 2 and 29* of the Personal Data Protection Act and some other related provisions of Act No. 227/2000 Coll., on Electronic Signature.

Activities of the Office in the Legislative Area

The competence and position of the Office in the legislative area was extended in 2002, in particular, by the fact that, following approval of a change in the Legislative Rules of the Government through Resolution of the Government No. 640 of June 19, 2002, the Office became one of the compulsory commentary places pursuant to Article 5 (1) (b) of the Rules. This fact means that the Office has been increasingly involved in the creation of legal regulations at the stage of their ministerial drafts, which has had favourable consequences particularly in areas where the Office has already acquired certain experience from its own control activities, such as in the areas of libraries, statistics, social security, registers of public administration, etc.

As a consequence of increased pressure of the Office on the parties submitting the individual draft legal regulations, it was possible to file and enforce fundamental comments of the Office in 2002, particularly in relation to the draft new Act on the Land Registry, draft amendment to the Act on Records of Inhabitants (in this connection, it should be noted that this draft Act includes a very important, newly regulated aspect of rights and duties connected with processing of birth certificate numbers).

Furthermore, attention should be brought to the fundamental comments of the Office filed in relation to the draft Act on the Basic Registers of Public Administration, draft amendment to the Act on the State Statistics Service, draft amendment to the Act on Residence of Foreigners in the Territory of the Czech Republic, draft Act on Archives and the Filing Service, draft Act – the Rules of Tax Procedure, draft Act on Health Care in Provision of Health-Care Services, etc. Amongst other things, the Office also concentrated on possible solutions to the issue of procedures of the bodies of the state and the related potential for intervention into protection of the privacy of the parties to proceedings, witnesses, keeping files, etc. In this relation, comments were filed, in particular, in relation to the new Code of Administrative Procedure, which were accepted by the Ministry of Interior (as the guarantor of the regulation).

However, the experience of the Office in relation to the approach of the Ministry of Justice was quite different; the comments of the Office were not accepted in connection with the preparation of the new regulation in the area of administrative justice.

Thus, the current ambiguity could persist, to a certain degree, in the approach to personal data processing in the area of the judiciary. Nevertheless, it should be stated that, with a few exceptions, there has been an improvement in communication with the individual ministries in discussing the standpoints of the Office and it is also favourable that the standpoints of the Office and the submitted comments are usually accepted at this stage.

However, the aspect of ensuring protection of personal data continues to be perceived by some legal entities as unnecessary complication. From the standpoint of securing the right to protection of personal data, the unfavourable legal regulation of personal data processing in the banking sector further deteriorated following adoption of Act No. 126/2002 Coll., which, in 2002, significantly amended the provisions of Act No. 21/1992 Coll., on Banks, as amended, regulating personal data processing in the banking sector. During discussion of the bill in the Chamber of Deputies and the Senate of the Parliament of the Czech Republic, the Office strived to prevent adoption of this regulation which is not compatible with the principles of personal data protection following for the Czech Republic from EC regulations. However, the comments and proposals of the Office were not respected and were not even discussed in the Chamber of Deputies and the Senate of the Parliament of the Czech Republic. This situation has led to critical evaluation of the level of law in the banking sector from the standpoint of protection of personal data, included in the Regular Evaluation Report of the European Commission for 2002. To eliminate these shortcomings, joint negotiations are currently being held between the representatives of the Czech National Bank, the Office and other institutions to provide for a remedy for this unfavourable state of affairs.

In 2002, the Office was also involved in the legislative process in the Chamber of Deputies and the Senate of the Parliament of the Czech Republic, both through its standpoints addressed directly to the relevant member of the Government (as was the case, e.g. in relation to the draft Act on the Competence of the State Administration and Self-Government in Health Care, draft Concept of the Reform of Administrative Punishment, draft amendment to the Act on Free Access to Information, etc.) and also through direct communication with the individual MPs and Senators in the framework of the legislative activities of the Chamber of Deputies and the Senate of the Parliament of the Czech Republic. This was the case, e.g., in discussion of the draft Act on Service of Public Servants in Administrative Authorities and on Remuneration of Such Servants and Other Employees in Administrative Authorities (the Service Act), draft Act on the Institute for Documentation of Totality, draft amendment to the Act on the Municipal Police, etc.

Activities of the Office in the Area of Application of Law

In 2002, the Office again recorded an increased interest of the general public, as well as of individual controllers and processors of personal data, in provision of standpoints, consultations and discussions concerning application of the Personal Data Protection Act in the framework of the legal order of the Czech Republic. The interest of the applicants has also increased in dependence on the development of the legal regulation in some socially important areas. This was the case, in particular, for the new regulation in the area of competence of municipalities in relation to introduction of the new type of fee for municipal waste, where the Office, following agreement with the Ministry of Finance, ultimately provided its standpoint based on the topical nature and frequency of incoming enquiries.

Furthermore, the Office has increasingly concentrated on the subject of personal data processing in the health-care sector, in particular, with respect to the newly stipulated conditions for personal data processing pursuant to Act No. 285/2002 Coll., the

Transplant Act, and the related procedures of the Ministry of Health in issuing implementing regulations concerning the rights and duties of entities active in the health-care sector.

In relation to the individual classification of the categories of applicants for provision of information or consultations in the area of protection of personal data, these entities may be classified both according to their area of interest or their area of competence, as appropriate, and according to their type.

Enquiries continue to be submitted to the Office by individual citizens whose personal data are subject to processing, or individual controllers, such as controllers consisting in joint-stock or other business companies, individual municipal bodies, entities active in the area of health care and other entities that encounter difficulties in application of certain provisions of the Personal Data Protection Act in their activities.

In relation to the area of interest of the individual entities, certain doubts remain in connection with the right or duty or interest in publishing personal data. Without regard to whether an interest of e.g. a business company in publishing photographs of the members of the Board of Directors on its website or an interest of a municipality in publishing e.g. the list of debtors of rent or debtors of other mandatory payments to the municipality on its official board is involved, all these controllers, unless they are authorized by a special law, usually do not understand that the procedure in publishing personal data must be governed exclusively by the provisions of the Personal Data Protection Act.

Certain efforts to achieve extension of the scope of published personal data often correspond to the unclear scope of aspects connected with application of the Act on Free Access to Information at the same level as application of the Personal Data Protection Act. The collision or conflict of approaches of the public to the area of protection of privacy and approach to information is at the same level in the Czech Republic as the conflict of these interests in other neighbouring states. Even though certain accordance of opinions has been recorded in this area, the Office is often criticized for its approach to the area of protection of personal data as an integral part of protection of the privacy of an individual and for its precedence over the right to free access to information.

It can be stated that the requests of applicants for information were mostly concerned with the area of rights and duties in keeping personnel agenda and submission of information concerning the personnel agenda of employees, the agenda of statutory representatives of individual legal persons and their salary relations, remuneration of the members of municipal councils of municipalities, etc.; in addition, the enquiries were concerned with provision of information from certain registers that are kept in the area of state administration or self-government (e.g. the Criminal Records, the Trade Register, lists of pupils, lists of lay judges at the courts, records of the population, etc.). Enquiries were also often concerned with delivery of various types of documents, both in relation to the manner of delivery and the scope of personal data that are subject to processing in this connection.

An area that will undoubtedly continue to be of increased interest to the general public lies in extent of the rights of an employer to monitor the activities of his employees through various technical means and the related aspects of the electronic mail of employees sent to their workplace. Furthermore, there continues to be lack of clarity in respect to rights and duties in processing of the personal data of tenants by the landlord or the entity managing real properties, as appropriate, which also carries out certain acts in this respect in relation to the tenants, especially in delivery of invoices for services related to the use of apartments. It seems highly likely that, in particular, a new legal regulation in this area could lead to clarification of some persistent problems.

Activities of the Special Commission of the President of the Office

The Special Commission of the President of the Office was established on the basis of § 61 (2) of the Code of Administrative Procedure. It prepares proposals for the President of the Office in cases where the President of the Office makes a decision on appeals. In 2002, the Commission prepared a recommendation for the President of the Office in thirteen cases, six of which were concerned with its legal competence pursuant to the Code of Administrative Procedure. In seven cases, the Commission prepared basic documents for decision-making by the President of the Office, on his request, in cases where the Code of Administrative Procedure is not employed and the President makes a decision on the basis of the Act on State Control.

Registration

Compared to the previous year, the number of newly submitted notifications was lower and no period witnessed an accumulation of notifications similar to that around May 2001, when a deadline was stipulated by law for provision of notifications. However, the notifications were of a better quality, documenting better information provided to the public on the Personal Data Protection Act. In contrast, there was an increase in the number of changes at the registered controllers, again in relation to termination of the activities of the District Authorities as of December 31, 2002 and the transfer of cases of personal data processing notified by the controllers to the authorized municipalities, in particular, in the area of library activities and substitute military service.

Fundamental changes occurred in the area of evaluation of individual notifications and in the area of internal administration of individual acts. All administrative and decision-making activities were transferred in a comprehensive manner to the Department for the Register. The Independent Department for Evaluation of Applications was dissolved and the actual evaluation was entrusted to the Department for the Register, in consultation with the Legislative and Legal Department for especially complex notifications. These consultations are concerned, in particular, with addressing of notifications that indicate collection of sensitive personal data without the consent of the data subject and without a legal basis.

Several new steps were introduced in the area of administration of acts, allowing for automation of further acts. This facilitates, in particular, a transparent arrangement of the individual decisions. A change was also made in the graphic design of the notification of registration. An important factor also consisted in publishing the Register, i.e. the parts thereof that are accessible to the public, on the Internet. The Register is thus accessible to the general public. This step led to an increase in the effectiveness of the activities of the Department for the Register especially in the area of enquiries whose number, nevertheless, equalled approx. 700 in 2002.

Status of applications for registration as of December 31, 2002

Overall number of notifications submitted	20 883
Number of controllers registered	17 703
Total number of registrations	20 143
Number of suspended notifications	134
Number of registrations terminated by the controller	283
Number of administrative proceedings terminated by the controller	93
Number of registrations not permitted by the Office	192

Supervision over Compliance with Obligations Laid Down by Law in Processing Personal Data

Activities of the Control Department

The main task of the Control Department of the Office for Personal Data Protection is to accept complaints and petitions concerning personal data processing and then address these complaints and petitions. In 2002, the Control Department thus dealt with 755 petitions of the above nature. The Office obtained these petitions:

- through written or electronic petitions of citizens and also legal persons and state bodies, as well as journalists
- on the basis of personal visits of complainants
- through monitoring of printed and electronic media

In the framework of the relevant investigations, as a rule, the Office does not disclose the identity of the complainant to third persons and discloses the identity of the complainant exclusively on the basis of his consent. The Office also does not refuse to address anonymous complaints.

A number of complaints are found to be unjustified after initial review, for the following reasons:

- A number of complaints are filed on the basis of the fact that the controller (usually a certain company, but also a state institution) has not fulfilled the expectation of the complainant concerning delivery of certain goods or services, issue of a decision, etc. Thus, the problem is not concerned with personal data protection, but attains this alleged dimension only when the complainant is not satisfied in proceedings pursuant to some other regulations or when he comes to the conclusion that this process (e.g. court action) would lead to excessive burdens for him.
- The complainants request a decision with respect to satisfaction of their own individual claims, e.g. statement of the obligation to provide a payment, obligation to provide an apology, etc. and claim proceedings pursuant to the cancelled Act No. 256/1992 Coll. However, the Office for Personal Data Protection is authorized to provide for elimination of system defects in processing of personal data pursuant to the Personal Data Protection Act, while other, in particular individual claims, must be addressed through the courts. *On the other hand, it should be noted that several competence actions had to be filed against decisions of the courts according to which the Office for Personal Data Protection would also be competent for such decisions. No final decision has yet been issued in this relation. Nevertheless, it must be taken into account that this issue could be further complicated by the amendment to § 9 of the Code of Civil Procedure which will come into effect on January 1, 2003. This amendment repeals the provisions on the competence of the courts in cases of operation of information systems managing personal data (in accord with the provision of § 42 of the Personal Data Protection Act, this activity must be considered to constitute processing of personal data). Extensive interpretation of this legislative change could support the absurd concept, according to which the Office for Personal Data Protection, as an administrative*

authority sui generis, is authorized to make decisions in civil cases in the framework of control proceedings held by the Office. It is also important in this relation that no fee is required for lodging a complaint, no requisites are prescribed for lodging a complaint, the complainant does not have the position of a party to the proceedings, and the aspect of execution of the decision would also be questionable; moreover, the controlled entity is bound to maintain confidentiality. However, it should be noted here that the Office deals with such complaints from the viewpoint of potential adoption of measures that are within the competence of the Office for Personal Data Protection.

● The complaints are sometimes concerned with ad hoc and non-systematic processing of information, e.g. in the form of a single piece of information published by the mass media. However, it is necessary to address this issue on the basis of other regulations, in particular, by bringing an action for the protection of personal rights pursuant to § 11 ff. of the Civil Code.

● In some cases, the complaint is concerned with personal data processing which is, however, regulated by a special law in relation to the Personal Data Protection Act. Note should also be taken here of the widespread incorrect opinion, according to which personal data may be processed only with the consent of the data subject and the Personal Data Protection Act constitutes a prohibition against personal data processing. These petitions that are concerned, in particular, with keeping the Land Register or the Commercial Register thus cannot be accepted. However, in the opinion of the Office, the frequency of these opinions raises the question as to whether it might be appropriate to take legislative measures leading to narrowing of the scope of personal data processed or limiting their accessibility (this is true, e.g. of the birth certificate numbers). In this sense, amongst other things, the Office dealt with this issue also in the framework of its legislative activities (cf. p. 9).

● A similar situation occurs if a complaint is lodged without the complainant first utilizing his right against the controller to prevent personal data processing (e.g. pursuant to § 5 (6) of the Personal Data Protection Act) or if a complaint is filed after granting proper consent to the processing of personal data, where the data subject failed to utilize his right to withdraw such consent. In this case, the Office refers to the need to primarily exercise the given rights, where control would be commenced only in case of inadequate response by the controller. A number of complaints are formulated so broadly or generally that they do not allow for commencement of effective control. If a complaint is found to be justified, the case is further dealt with in cooperation with the inspector. Control proceedings are usually commenced; however, where there is only an intention to process personal data, consultation can be provided by the Office in addressing the case. Similarly, in exceptional cases, control may be waived if the entity against which the complaint is aimed takes effective measures for a remedy promptly after the first contact with the Office for Personal Data Protection. However, even these measures would not exclude punishment proceedings pursuant to Chapter VII of the Personal Data Protection Act.

Justified complaints usually indicate the following shortcomings in personal data processing (however, it must be noted here that a number of problems described in the previous Annual Report persist):

❶ In connection with direct marketing, a problem remains in unclear sources of data used for addressing potential clients. This is probably also caused by the fact that a majority of data was obtained prior to legal force of the Personal Data Protection Act. Furthermore, a number of companies clearly exceed the framework of the provisions of § 5 (6) to (10) of the Personal Data Protection Act without requesting the proper consent of the data subject. This issue is further complicated by the frequent unwillingness of companies to properly communicate with the data subjects. Thus, the above problems also document the fact that the opinion according to which personal data are fully at the disposal of by their controller has not yet been fully overcome, while the Personal Data

Protection Act is based on the opposite premise according to which it is principally up to the data subject (subject to exceptions permitted by law) how these data are to be managed.

② The birth certificate number continues to be excessively utilized on the basis of the incorrect opinion that a birth certificate number is an absolute identifier of a natural person and thus a natural supplement to the name and surname. However, the Office for Personal Data Protection bases its considerations on the fact that knowledge of the name, surname, address and the date of birth, as appropriate, fully suffices to identify a natural person. Therefore, the Office permits processing of the birth certificate number only where this is laid down by a special law (e.g. for the purposes of social security, etc.). Otherwise, this is a redundant piece of information processed at variance with the provision of § 5 (1) (d) of the Personal Data Protection Act. Thus, however, the Office does not preclude the possibility of introducing a special identifier (e.g. a customer number).

It must be noted that knowledge of the birth certificate number can generally be misused for illegal interconnection of individual records leading to unacceptable monitoring of a natural person. However, it should be stated that the excessive use of birth certificate numbers is currently so “massive” that amendment to Act No. 133/2000 Coll. will be clearly required for its elimination, explicitly prohibiting this use and laying down a transitional period to attain a satisfactory state of affairs. (Cf. Activities of the Office in the Legal Area, p. 9)

③ Processing of personal data should be considered to include systematic acquisition of video (camera) recordings of identifiable natural persons.

This activity may nonetheless be carried out without an explicit legal title, such as follows from Act No. 283/1991 Coll., and without the consent of the data subject, on the basis of the provision of § 5 (2) (e) of the Personal Data Protection Act, allowing for personal data processing, where this is necessary for the protection of the rights of the controller and unless this is at variance with the right of the data subject to protection of his private and personal life.

However, to achieve conformity with the Personal Data Protection Act, it is necessary to fulfil, in particular, the following conditions:

- Monitoring may not be carried out in premises intended exclusively for private acts.

- The legitimate purpose for which the relevant recordings may be used must be clearly specified.

Prior notice must be given of the monitoring (e.g. by a clearly located sign).

In this relation, it should be noted that the provision of § 11 (8) of the Personal Data Protection Act lays down the obligation to inform the data subject of the procedure pursuant to § 5 (2) (e) of the latter regulation.

- The recordings made must be effectively protected against misuse.

However these conditions are not always complied with.

④ The Office for Personal Data Protection continues to eliminate activities consisting in copying personal documents and subsequent retaining of copies of documents, which is often presented as a precondition for the provision of services. The Office continues to base its activities on the standpoint that personal documents (e.g. the personal identity card) contain substantially more information than required for the provision of service (e.g. conclusion of a contract) and thus keeping the relevant copies is not necessary. Such conduct cannot be justified by frequent references to ensuring the accuracy of personal data. However, this standpoint does not prevent the option of retaining the relevant copies provided that the redundant data are made illegible. However, in this relation, it must not be forgotten that part of the general public disagrees with the interpretation of the Office in the sense that copying of personal documents cannot be simply prohibited as processing *contra lege*, as sufficient basis has yet not been found for

such a procedure in law. The recommendation for the data subjects to insist on adequate modification of copies of the documents (e.g. by blackening), does not mean that the Office is not willing to impose the required penalties on the controller, but rather that they strive to find an acceptable solution for effective protection of the rights of natural persons. It can be added that blackening of certain parts of documents is a common procedure e.g. in archiving practice in working with documents whose content is to be partly concealed (e.g. to protect the rights of third persons).

⑤ The Office for Personal Data Protection continues to fight against publishing lists of debtors. The Office bases its reasoning on the fact that the relevant procedure is not a legal method of exacting the debt. Furthermore, it cannot be accepted that a citizen, as a consequence of being a debtor, would lose the right to the protection of his privacy. For this reason, the opinion that the relevant act is permitted by the provision of § 5 (2) (e) of the Personal Data Protection Act is unacceptable. However, it should also be emphasized that the Office does not consider it to be inadmissible to disclose personal data in the form of a public edict provided that such a procedure is in accord with a special regulation (the Code of Administrative Procedure). Similarly, the Office for Personal Data Protection is not against advertisements searching for debtors of a certain person if the thus-obtained information is intended for the purposes of settlement proceedings.

⑥ A number of controllers are attempting to factually evade the provisions of the Personal Data Protection Act through the requirement on the consent of the data subject. Such consent is usually formulated very broadly – in particular, it does not accurately specify, at variance with the provisions of § 5 (5) and § 9 (a) of the Personal Data Protection Act, which personal data are to be processed, for what purposes and by which controllers. There is frequently no specification of the period of time for personal data processing or this period of time is inappropriately long. Furthermore, the provision of a certain service is often made conditional upon the consent to processing of personal data for purposes that are not directly related to such service, which indicates violation of the provision of § 5 (1) (g) of the Personal Data Protection Act.

⑦ In 2002, there were several cases of misuse of the personal data of persons who expressed their support for a certain petition pursuant to Act No. 85/1990 Coll. The Office bases its reasoning on the fact that the relevant data serve only for the purposes of addressing the petition pursuant to the latter regulation and may not be disclosed to any third persons. Other procedure would lead to violation of § 5 (1) (f) of the Personal Data Protection Act.

⑧ The Office for Personal Data Protection received a complaint against an employer concerning submission of personal data of employees to commercial insurance companies for the purposes of concluding an insurance contract without previous discussion of such procedure with the affected employees. This procedure should be qualified as violation of the Personal Data Protection Act, as amended (consideration could also be based on Act No. 65/1965 Coll., - the Labour Code – which explicitly states in § 60 that information on an employee may be disclosed only with his consent – except for confirmation of employment).

In several cases, the Office was notified of unsuitably processed applications of certain controllers in the environment of the Internet, as a consequence of which rights of the data subject could be infringed upon. These cases involved administration of client information that was to serve for “self-service” operation of certain services, based on a contractual relationship between the controller and the client. Selection of the option was carried out by confirming certain links in the environment of an automated section. However, a problem lay in the manner in which the controller intended to obtain the consent to processing of personal data for marketing. He set only the choice of consent to this function and did not allow for disagreement in the same manner. On the basis of a notice by the Office, these Internet applications were modified

in a suitable manner. Furthermore, in 9 cases, the Control Department initiated a petition to the bodies active in criminal proceedings. In this, it followed from the fact that it is necessary to prefer an interest in clarifying criminal activities over the proceedings pursuant to the Personal Data Protection Act. However, simultaneously, the Control Department provided the bodies active in criminal proceedings with a number of consultations, where the subject of their interest consisted in personal data processing. On the other hand, the Office accepted a number of instigations from these bodies. These were concerned, in particular, with situations where the case was suspended as the relevant conduct did not have the features of a criminal offence but could rather be a misdemeanour pursuant to § 44 of the Personal Data Protection Act or where the results of investigation indicated that the conduct could point to a systematic defect in personal data processing.

Furthermore, the Control Department fulfils the tasks of the body competent to discuss misdemeanours pursuant to § 44 of the Personal Data Protection Act. In this connection, it should be pointed out that several cases had to be suspended for the reason of a transitional period pursuant to § 47 of the Personal Data Protection Act. Similarly, in several cases, the committing of a misdemeanour could not be clearly demonstrated. The Office discussed, in particular, cases of misconduct consisting in excessive use of birth certificate numbers, violation of the obligation to maintain confidentiality and unauthorized disclosure of personal data.

The Control Department of the Office also participated in activities concerned with inclusion of the Czech Republic in the Schengen system and Europol. The purpose of this participation by the Office consists both in ensuring the general level of the legislation of the Czech Republic in relation to personal data protection in accord with the requirements of the relevant *acquis*. Another task consists in providing for the ability of the Office to adopt tasks following from the *acquis* in relation to ensuring supervisory functions over the relevant personal data processing.

The former was fulfilled earlier by adoption by the Czech Republic of the Personal Data Protection Act corresponding to the terms and conditions of Convention No. 108/1981 and ratifying this Convention. The latter was implemented, in principle, by establishing the Office for Personal Data Protection that is capable of providing for the required level of control. However, it is still necessary to increase the number of control personnel and provide them with suitable working conditions. The above was stated and accepted during a number of negotiations (including international) held on the relevant aspects.

Simultaneously, it should be emphasized that the Office is not and cannot be responsible for development and operation of systems for personal data processing serving for the purposes of the relevant institutions. This would be in direct contradiction with performance of the supervisory function in the relevant areas.

Activities of Inspectors of the Office

Control activities of the Office were performed by inspectors who are authorized pursuant the provision of § 33 (3) of the Personal Data Protection Act to carry out control, to direct control and to draw up a control protocol. Some controls also involved other employees of the Office, in particular, the Control Department, in accord with § 30 (2) of the Personal Data Protection Act.

Control activities of the Office were performed in 2002 in accord with § 31 of the Act on the basis of the control plan or on the basis of the instigations and complaints of citizens. 23 controls were carried out in 2002 on the basis of the control plan. These controls were usually of a comprehensive nature and were demanding, in particular, from the temporal, technical and legal standpoints. Another 40 controls, implemented on the basis of individual instigations (including the media), were mainly short-term controls, concerned particularly with a specific instigation or complaint. However, the scope of

control is limited by the fact that the inspectors do not have the required number of qualified control workers to create control teams.

In 2002, control activities were carried out in a very wide range of fields. Controls performed in the area of banking and insurance, and at bodies and organizations of public administration (in particular, central), energy companies, telephone operators and transport companies can be considered fundamental.

In relation to the most frequent defects, no specific violation of the Act was predominant. However, it is generally valid that the level of safeguarding of personal data against various types of misuse was usually insufficient at the controlled entities. This fact follows from the generally greater orientation of the controlled entities towards specific technical procedures of safeguarding the data which, however, are usually not systematic and systematically implemented. In contrast, lack of legal conscience from the standpoint of personal data protection, in particular, in relation to management structures of the individual controlled entities, was usually found. The resulting protection of data is only intuitive, ensured at the level of technical personnel providing for operation of the electronic information systems of the organization.

Of those commenced in 2001, 15 controls were completed in 2002. 61 controls were newly commenced in 2002, 43 of which were completed. The remaining 18 uncompleted controls were transferred to 2003.

In the framework of the completed controls, measures for a remedy were imposed on 41 controlled entities, of which liquidation of personal data was imposed in seven cases. Measures for a remedy were not imposed on sixteen controlled entities, partly because of the fact that minor shortcomings were eliminated during the control and partly because no violation of the Personal Data Protection Act was found.

The results of controls indicated frequent violation of § 5 (1) of the Personal Data Protection Act. A total of 19 entities failed to collect personal data only for the set purpose and in the scope required for fulfilling the set purpose. A single entity violated the obligation to lay down the means and manner of personal data processing. Ten entities failed to comply with the obligation to maintain personal data only for the period required for the purpose of their processing. A single entity failed to process personal data in accord with the purpose for which they were collected. Four entities failed to comply with the obligation to collect personal data exclusively in an open manner and seven entities combined personal data obtained for various purposes. A single controlled controller violated the obligation to process only accurate and correct personal data.

There was also frequent violation of the obligation to process personal data only with the consent of the data subject pursuant to § 5 (2) of the Personal Data Protection Act. A total of 15 controlled entities violated this provision. 5 controlled entities failed to comply with the requisites of the granted consent pursuant to § 5 (5) and § 9 of the Personal Data Protection Act. A total of 14 controlled entities failed to comply with the obligation to conclude a proper agreement on processing of personal data with the processor pursuant to § 6 of the Personal Data Protection Act. A single controlled entity failed to comply with the obligation to ensure protection against unauthorized infringement upon the private and personal life of the data subject, nine controlled entities failed to fulfil the obligation to duly inform the data subjects pursuant to § 11 of the Personal Data Protection Act. Four controlled controllers violated the obligation to provide information on personal data. Proper security measures pursuant to § 13 of the Personal Data Protection Act, ensuring that personal data cannot be misused, were not adopted by a total of 19 controlled entities. In a single case it was found that the employees of the controller failed to process personal data only under the conditions and in the scope laid down by the controller, through which the controller violated the provision of § 14 of the Personal Data Protection Act. Eight controlled entities failed to fulfil the notification obligation pursuant to § 16 of the Personal Data Protection Act and two entities failed to apply for a permit to provide personal data abroad pursuant to § 27 of the Act.

On the basis of control findings, 3 administrative proceedings on imposing a fine for an administrative tort were commenced. In one case, the proceedings have been completed and a fine was imposed in the amount of CZK 3 million.

No criminal notice was lodged on the basis of control findings.

Electronic Signature

Amendment to the Personal Data Protection Act in 2001 vested the Office with the competence of a central state authority also in the area of electronic signatures and issuing implementing regulations in the scope stipulated in the Electronic Signature Act. This satisfied a fundamental comment on the Personal Data Protection Act and the amendment provided the Office with the competence to issue implementing regulations pursuant to the Electronic Signature Act. The primary task in accord with the adopted regulations was to commence practical assessment of applications for granting accreditation to act as an accredited certification service provider and to evaluate instruments of electronic signatures.

A project for establishing a certification authority was implemented in order to fulfil the obligations following directly from the Electronic Signature Act. This authority is a workplace with a special regime, i.e. with protected premises, whose regime corresponds to the security policy and is safeguarded similarly as buildings of category "D" pursuant to the National Security Office edict on security of buildings.

In 2002, the Office held administrative proceedings on an application submitted at the end of 2001 and granted accreditation to act as an accredited certification service provider to První certifikační autorita a.s. as of March 18, 2002. Another application for granting accreditation was received by the Office during 2002. However, proceedings on the application were discontinued by the Office for the reason of failure to meet the conditions on the part of the applicant pursuant to the second and third sentences of § 10 (3) of the Electronic Signature Act.

As the substantively and locally competent body pursuant to § 9 (2) (e) of the Electronic Signature Act, the Office for Personal Data Protection declared conformity for four instruments with the requirements laid down by the legal regulations.

<i>nShield F3 SCSI</i>	<i>Hardware version nC4032W-150, Firmware 5.0 operating in the FIPS mode January 22, 2002</i>
<i>CSA8000</i>	<i>Hardware Revision: G, Firmware Version 1.1 operating in the FIPS mode January 28, 2002</i>
<i>PrivateServer 3.0</i>	<i>Hardware Version 3.0, Firmware Version 3 operating in the FIPS mode March 12, 2002</i>
<i>Luna CA³</i>	<i>Hardware from the Chrysalis-ITS, Inc. company, Firmware version 3.2 April 29, 2002</i>

The Department for Electronic Signatures provided over 50 expert consultations. These consultations were provided, in particular, to applicants and potential applicants for accreditation or entities who intended to issue qualified certificates, as appropriate. Employees of the Department for Electronic Signatures made a presentation at a number of professional events and in the media, and published a number of professional articles. Topical information was prepared for publication in the Journal and on the website of the Office. To provide information to the general public on the legal regulations on electronic signatures, the collective of authors from the Office issued a document entitled "Electronic signatures" and the employees of the Department for Electronic Signatures presented lectures at conferences abroad, issued 2 publications, published 14 articles in expert reports and 29 professional journals, and cooperated with universities.

Foreign Relations and Participation of the Office in International Cooperation

In the area of foreign relations, the provision of § 27 of the Personal Data Protection Act imposes on the Office the obligation to hold administrative proceedings connected with issuing decisions on permitting or rejecting the provision of personal data to other countries. The main viewpoint in decision-making in this respect consists in the adequacy of legislative protection of personal data in the country to which the data are to be provided. Simultaneously, the decision-making process also encompasses the viewpoints specified in Article 12 of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Council of Europe, 1981, ETS 108), which was ratified by the Czech Republic on July 9, 2001.

In assessing the adequate level of personal data protection in the country of destination, the Office basis its considerations on the current practice in the European Union and on the criteria monitored by the Council of Europe.

In 2002, the Office dealt with a total of 149 applications for a permit to provide personal data abroad. It issued 138 decisions fully permitting the provision, 6 decisions rejected the application in full, and 3 final decisions that contained both favourable and rejecting standpoints (these decisions usually contained consent to provisions of data to countries with adequate legislation and rejection of provision of data to countries with inadequate legal protection). In 28 cases, the Office interrupted the administrative proceedings, of which one application was subsequently withdrawn and one case remained unresolved as of December 31, 2002.

In § 29 (1) (h) (changed to (g) through amendment brought by Act No. 517/2002 Coll.), the Personal Data Protection Act, from the viewpoint of involvement in international cooperation, imposes the task on the Office to provide for fulfilment of the requirements following from international agreements binding the Czech Republic. In the framework of its competence, the Office provides for harmonization of the national legislation and the related practice with the law of the European Union, the *acquis communautaire*. Similarly as in the previous year, the 2002 Regular Report of the European Commission contains a favourable assessment of the state of data protection in the Czech Republic and, in particular, of the activities of the Office, although it simultaneously points out the need to carry out certain modifications of the Personal Data Protection Act; the only explicit criticism is concerned with the lack of compatibility of Act No. 21/1992 Coll., on Banks, as amended, in the area of data protection.

Thus, completion of transposition of Directive 95/46/EC will require certain modifications of the Personal Data Protection Act prior to accession of the Czech Republic to the European Union, on the basis of the experience of the Office in application of the Act, the results of working contacts with the competent workplace of the DG Internal Market of the European Commission and also certain conclusions drawn from the cooperation with Spanish experts in the framework of a Phare twinning project.

The Office also began to deal with the manner of transposing the new regulation consisting in Directive 2002/58/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) with which the member states of the European Union should harmonize their legislation by October 2003 and thus the Czech Republic will also have to fully transpose its provisions by the date of its accession to the European Union.

A group of experts involved in the Peer Review, who visited the Office on June 19 – 21, 2002, consisted of representatives of the Spanish, German and Portuguese offices for data protection. The evaluation was positive and it is explicitly stated in the conclusion that: "The group of experts for the Peer Review was greatly impressed by the results achieved by the Czech Office for Personal Data Protection during such a short period of

time since its founding in 2000. The Office is a very well known, renowned and respected institution, which fulfils all the aspects and conditions contained in Article 28 of Directive 95/46/EC in practice. All the departments carry out their activities with great dedication and with a very high level of knowledge.”

In relation to the European Agreement, the Office contributed to the preparation for accession of the Czech Republic to the European Union also through its participation in the joint work of the intersectoral Working Committee for Integration to the European Union attached to the Ministry of Foreign Affairs of the Czech Republic, including some of its subcommittees. It participated in the preparation and evaluation of implementation of the basic documents, of which the chapters Free Movement of Services and Justice and Interior, and partly also Telecommunications and Information Technology and Information Society, are directly related to the activities of the Office. In the above framework, the Office directly cooperated, in particular, with the Ministry of Interior, Ministry of Finance, Ministry of Transport and Communications and the Office for Public Information Systems. Cooperation was developed especially with the Ministry of Interior of the Czech Republic in preparation of activities connected with the Schengen Agreement and Europol Agreement.

The continuing participation of the Office in activities following from the obligations of the Czech Republic as a member state of the Council of Europe and OECD is also related to fulfilment of the requirements of the international agreements. In relation to the above-mentioned ratification of Council of Europe Convention No. 108 of 1981, an Additional Protocol to the Convention regarding supervisory authorities and transborder data flow was signed on April 10, 2002. The unfinished process of extending the ratification of the Convention to include non-automated personal data processing is also underway. The President of the Office represents the Czech Republic in the Council of Europe in the project group on data protection and is also an elected member of the coordination committee. The President participates in creation of documents of the Council of Europe in this area and has been entrusted with creation of documents on the protection of personal data in the use of chip cards. In the framework of OECD, cooperation is continuing with the Working Party for Information Security and Privacy (WPISP under the ICCP committee).

The decision of the Article 29 Data Protection Working Party (WP 29) of December 13, 2001 created an important new platform for the contact of representatives of independent bodies of supervision at the highest level (Presidents and their deputies) of the member states of the European Union and the candidate countries.

The joint activities of representatives of independent authorities for data protection from the countries of Central and Eastern Europe, commenced in 2001 on the basis of an initiative of the Office and the Polish Office of the General Inspector for Personal Data Protection, such as working meetings of the Presidents and a joint website (), intended to provide for mutual exchange of experience connected with preparation for accession to the European Union, were also continued. The Office organized the spring meeting in Prague.

In addition to the above-mentioned meetings of WP29, the most important meetings in this respect included:

- The Conference of European Commissioners for Data Protection, *Bonn, April 24 – 26, 2002,*
- 24th The International Conference of European Commissioners for Data Protection, *Cardiff, September 9 -11, 2002,*
- 3rd The Meeting of the East-European Commissioners for Data Protection and the INFOBALT 2002 Conference, *Vilnius, October 21 – 22, 2002.*

The *one-year twinning project (CZ/2000/IB/OT/03) of expert assistance* financed from the National Phare 2002 Program was completed in September 2002 and represented the climax of above-standard cooperation of the Office with the Spanish Agency for Protection of Data (APD).

The employees of the Office participated in 23 further international conferences.

Relations of the Office with the General Public

In 2002, the efforts of the Office were concentrated on improving awareness of the Personal Data Protection Act amongst the general public and patient clarification of specific problems that were the subject of enquiries of citizens to the Office in relation to application of the Act.

The search for new potential for communication led, in particular, to creation of a directory for direct contact with District, City and Municipal Authorities through e-mail. The Office considered the offer of direct contribution to application of legal regulations in the framework of its competence to be an effective service for the general public in places where the Act is applied in everyday life.

Another option for improving communication with the general public consists in the use of a discussion forum on the website of the Office. The discussion forum was put into operation in a test regime in a form that can be serviced by the Office with its current personnel base. Although this operation is planned as quarterly for the above reasons, the Office considers the feedback character of this communication to also be an important component of reflection of its own work.

In the subsequent year, it will be necessary to complete and implement the project for a special educational program for personal data protection and ethics in electronic communication aimed at the younger generation and children.

A new information channel was created for the Czech Office by participation in the website of the V4 and Baltic countries: The website () is partly informative in character and serves the general public, and also partly supports close cooperation of the protectors of personal data in the countries of the Visegrad Group and in the Baltic countries – they utilize the site for communication and also as a type of a permanent conference.

Important steps in communication with the general public included creation of a logo of the Office, which followed from interesting and successful cooperation with the Academy of Arts, Architecture and Design.

Publishing Activities

In 2002, the Office issued editions 12 – 21 of the Journal; edition 22 will be issued for the end of 2002 and beginning of 2003. In the Journal, the Office also issued translations of the Recommendation of the Council of Europe concerning personal data protection. The translations were made at the instigation of the Office as a contribution to harmonization of the Czech legal order with the law of the European Union and with the intent to facilitate, within the competence of the Office, the approximation of the Czech Republic to the member states of the European Union in this respect.

The three volumes of the information bulletin of the Office that have been issued not only provide information on fundamental issues addressed by the Office in the first three quarters of the year, but also provide a concept of the operation of the Office and of events in which the Office is involved both in this country and abroad, and refer to problems encountered by the Office. The volume of the bulletin describing the events in the last quarter of 2002 will be published during the first quarter of 2003.

A new section of the bulletin is devoted to interviews with inspectors of the Office, summarizing their practical experience in the area of management of personal data.

On the “coloured pages”, the Office publishes its standpoints on significant aspects of personal data protection in relation to which it considers it necessary to provide legal interpretation and to adopt a fundamental standpoint.

The web site of the Office provides a very extensive description of the subject of personal data protection.

Communication with the Media

Agency service	14
Press	
Daily Press	76
Periodicals	11
Total press.....	87
Television	66
Radio	23
TOTAL MEDIA	190

Personnel Background of the Office

As of December 31, 2001 (January 1, 2002), the Office for Personal Data Protection had 65 (68) employees.

In spite of a written interpellation by the MPs at the Prime Minister of the Czech Republic, concerned with improving the conditions for the work of the Office and despite all the other initiatives of the senior employees, the issue of premises has not yet been resolved and thus recruiting of new employees was affected by the spatial capacity in 2002. In principle, the number of employees remained at the 2001 level; as of December 31, 2002, the Office had 71 employees.

Information System of the Office

Further development of the information system of the Office continued during the entire year 2002 and was oriented in several directions:

1. Technical implementation of the internal testing line for the Department for the Electronic Signature;
2. Displaying the Register of Permitted Cases of Processing on the web site of the Office;
3. Development of the basic project of the system for support of control and inspection activities of the Office;
4. Development of a system for sending joint e-mails to workplaces of the public administration;
5. Development of a Discussion Forum on the web site of the Office;
6. Direct anti-virus protection of the e-mail system;
7. Extension of intranet sites.

The inspection and control activities of the Office are currently so extensive that they require development of program equipment for their support. During 2002, following numerous discussions, a model of these activities was developed, together with its link to the current program equipment of the Office, and project planning is currently being prepared for the subsidiary system for the inspection and control activities of the Office.

The Office for Personal Data Protection in Figures – 2002

Lectures, seminars	78
E-mail enquiries	1 500
Enquiries received by mail - legal persons	304
Enquiries received by mail - natural persons	117
Telephone enquiries	4 431
Total enquiries	6 402
Personal consultation provided to citizens and institutions	116
Contact with the media – Agency service, press, radio and television	190
Regular press conferences of the Office	3
Published materials - Journal of the Office (number of editions)	9
Journal of the Office (number of editions)	4
Standpoints /on practical issues	2 / 7
Press releases and communications for the press	16
Additional basic documents for the media	70
Total published materials	108
External hits of the website of the Office – daily average	105
Registration - Total number of registrations	20 143
Control activities – Control Department and inspectors	354
Comments on legal regulations – Acts	59
Decrees	48
Regulations of the Government	19
Other	53
Total comments on legal regulations	179
Institutions to whose materials comments were provided	
Czech National Bank	3
Czech Mining Authority	7
State Office for Nuclear Safety	3
Czech Geodetic and Cadastral Office	2
Czech Statistical Office	3
National Security Office	4
Industrial Property Office	1
Office for Public Information Systems	8
Office of the Government	14
Ministry of the Environment	19
Ministry of Labour and Social Affairs	16
Ministry of Transport and Communications	15
Ministry of Interior	27
Ministry of Defence	6
Ministry of Education	7
Ministry of Justice	8
Ministry of Health	6
Ministry of Finance	20
Ministry for Regional Development	2
Ministry of Culture	8
Commented materials / Total institutions	179 / 20
Provision of personal data abroad	
Number of decisions concerning transborder transfer of personal data (Art. 27 of Act No. 101/2000 Coll.)	147
<i>(The table depicts the state of affairs as of December 31, 2002.)</i>	

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