

# PERSONAL DATA PROTECTION

Coordinator LDH



Partners AEDH – EDRI – IURE - PANGEA

## Romania national report EDRi

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European Digital Rights  
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## I. General synthesis

### I.1. Legislation regarding privacy

Romania has no long history on privacy and personal data protection. Although before 1989 the right to privacy was recognised as a fundamental human right,<sup>1</sup> it was frequently infringed, especially by the Romanian Security intrusion. The searches without warrant, with or without a reason, the requisitioning of personal goods, journals or notes just because they would contain critical opinions towards the regime in power, the interception and control of the correspondence and telephone calls were usual practices. Major changes in this domain occur only after the revolution in December 1989. The first reference to the right to privacy occurs in the Constitution adopted in 1991. Although the People's Advocate Institution was created by the Constitution in 1991, it practically started its activity only in 1997 and dealt with few cases related to the right to privacy. The legislation changes started to occur with the European integration process, which imposed normative acts, adopted in 2001, that are specific for the personal data protection domain.

The Romanian Constitution<sup>2</sup> adopted in 1991 recognizes under Title II (Fundamental Rights, Freedoms and Duties) the rights of privacy, inviolability of domicile, freedom of conscience and expression.<sup>3</sup>

Derogation from provisions under Article 26 paragraph (1) is permissible by law, in the following circumstances: for carrying into execution a warrant for arrest or a court sentence; to remove any danger against the life, physical integrity or assets of a person; to defend national security or public order; to prevent the spread of an epidemic. Searches may be ordered only by a magistrate and carried out exclusively under observance of the legal procedure. Searches at night time shall be prohibited, except in cases of flagrante delicto."

There are also constitutional provisions that covers the secrecy of communications and the freedom of expression.<sup>4</sup>

In November 2001, the Parliament enacted Law No. 676/20015 on the Processing of Personal Data and the Protection of Privacy in the Telecommunications Sector<sup>6</sup> and Law No.

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1 Romania was one of the countries who signed the Universal Declaration of Human Rights 1948

2 Online at [http://www.cdep.ro/pls/dic/act\\_show?ida=1&idl=2&tit=2#t2c2s0a26](http://www.cdep.ro/pls/dic/act_show?ida=1&idl=2&tit=2#t2c2s0a26)

3 Article 26 on the Constitution states:

*(1)Public authorities shall respect and protect intimacy, family and private life.*

*(2) Any natural person has the right to freely dispose of himself unless by this he causes an infringement upon the rights and freedoms of others, on public order or morals.*

Article 27 of the Constitution states:

*The domicile and the residence are inviolable. No one may enter or remain in the domicile or residence of a person without consent.*

4 Article 28 states, "*Secrecy of the letters, telegrams and other postal communications, of telephone conversations and of any other legal means of communication is inviolable.*"

According to Article 30, "*(6) Freedom of expression shall not be prejudicial to the dignity, honour, privacy of person, and the right to one's own image.*"

5 For more details on the content of the laws see Bogdan Manolea, Institutional Framework for Personal Data Protection in Romania, - Personal Data Protection, Policy and Practice in EU new and accession member states page 31, Center for Policy Modernisation, Bulgaria, ISBN 954-9506-30-4

677/2001 for the Protection of Persons concerning the Processing of Personal Data and the Free Circulation of Such Data.<sup>7</sup> These laws follow very closely the European Union Telecommunications Privacy (1997/66/EC) and Data Protection (1995/46/EC) Directives respectively.

In 2004 Law 676/2001 is practically replaced by Law 506/2004 closely following Directive 2002/58/CE of the European Parliament and the Council on personal data processing and privacy protection in the electronic communication sector, published in the Official Journal of the European Community no.L.201/31.07.2002.

The supervisory authority for Law No. 677/2001 was the People's Advocate (also called "Ombudsman").<sup>8</sup> The Organizational and Functional Regulations of the People's Advocate were changed in order to provide the creation of a special Private Information Protection Office (PIPO), concerned with the protection of individuals in relation to private data processing.

But in reality the implementation showed major deficiencies and the designated Authority had a very modest activity in applying the laws. This was subject to criticism in several Progression report of the European Union Accession such as the "2004- Regular Report On Romania's progress towards accession" <sup>9</sup>- which underlines:

"However, progress in implementing personal data protection rules has only been limited. There are grounds for concern regarding the enforcement of these rules: enforcement activities are far below levels in current Member States and additional posts have not been filled during the reporting period."

After several future delays, the Romanian Government decided to solve the problem by setting up a new, independent authority, which was created by law 102/2005.

## **I.2. Data Protection Authorities**

The new Authority for protecting the personal data - National Authority for the Supervision of Personal Data Processing (*ANSPDCP*)- was created, on paper, only Law no. 102/2005<sup>10</sup>, that came into force at 12<sup>th</sup> May 2005. Even the law foreseen that the activity of the new Authority should start in 45 days since its entry into force, the president of the new Authority was nominated by the Senate only in 22 September 2005. On the same day the Senate approved Ms. Georgeta Basarabescu as the first president of the ANSPDCP<sup>11</sup>. Ms. Basarabescu was involved in the People's Advocate Office as a Deputy Director responsible for personal data protection issues.

Due to the big delay in creating the Authority, the Romanian Government issued an Emergency Ordinance no. 131/2005 <sup>12</sup> that delayed the time for creating the authority until 31 December 2005. The internal regulations of the new authority were adopted on 2 November 2005.<sup>13</sup>

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6 <http://www.riti-internews.ro/lg676.htm>

7 <http://www.avp.ro/leg677en.html>

8 <http://www.avp.ro>

9 Available at [http://europa.eu.int/comm/enlargement/report\\_2004/pdf/rr\\_ro\\_2004\\_en.pdf](http://europa.eu.int/comm/enlargement/report_2004/pdf/rr_ro_2004_en.pdf)

10 Official Monitor, No. 391 of May 9, 2005, available at <[http://www.legi-internet.ro/index.php/Legea\\_privind\\_infiintarea\\_org/82/0/](http://www.legi-internet.ro/index.php/Legea_privind_infiintarea_org/82/0/)> (in Romanian).

11 See the transcript of the Senate discussions for this point at [http://www.cdep.ro/pls/steno/steno.stenograma?ids=5937&idm=4&idl=1\(only](http://www.cdep.ro/pls/steno/steno.stenograma?ids=5937&idm=4&idl=1(only) in Romanian)

12 Official Monitor No. 883 of October 3, 2005, text available at [http://legi-internet.ro/blogs/index.php?title=autoritatea\\_naa\\_355\\_ionala\\_de\\_supraveghe&more=1&c=1&tb=1&pb=1](http://legi-internet.ro/blogs/index.php?title=autoritatea_naa_355_ionala_de_supraveghe&more=1&c=1&tb=1&pb=1)

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

The activity of the new institution began only in February 2006, an official press release announcing on 20 February 2006 that fact that the new institution can provide advice and help for the infringement of the personal data legislation.<sup>14</sup>

The new authority is lead by a President and Vice-president elected for a 5-year term by the Senate. The Authority is independent, having just the obligation to present an annual report to the Romanian Senate.

The authority took 2 important decisions in 2007, in order to promote an easier notification of the personal data controllers to the Authority. One was the implementation of an online system that allows the notification of the controllers to ANSPDCP and the second one the abolishment of the notification fee.<sup>15</sup>

The Romanian Data Protection Authority (DPA) has no territorial offices and no special budget for public communication, but has succeeded in the past three years to increase dramatically the activity in the field of data protection, especially with the number of registered data controllers, inspection and number of complaints received. For example in the field of complaints received, its number increased from just a few before 2006 to 550 in 2008.<sup>16</sup>

The Authority may be asked for its opinion on normative acts. In 2008 the Romanian DPA was consulted for 17 normative act. However, the opinion is not obligatory for the authority that requested it and it is not published on the DPA's website.

The DPA has also been involved in awareness activities, usually with partnership from the public sector (Prefect's offices in several counties, Police Inspectorates), private sector (Professional Association from real estate, notaries, Chambers of Commerce) and educational sector (Universities in Sibiu and Tg. Jiu).

The DPA has organized the Open Doors Event and several events with the occasion of the European Data protection day.

Even though the Romanian Authority has received new attributions with the passing of the data retention law, the number of employees has remained the same (only 35 positions filled in August 2009) and the budget very limited.

In these conditions it is not surprising that data protection is not a well-known topic yet.<sup>17</sup> The April EU Euro barometer that investigated perceptions on data protection among EU citizens shows that 79% of the Romanians have no idea that there is a law in the field of personal data.

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14 See [http://www.dataprotection.ro/index.php?option=com\\_content&task=view&id=4&Itemid=57](http://www.dataprotection.ro/index.php?option=com_content&task=view&id=4&Itemid=57) press release at

15 The abolishment was made by the Government Emergency Ordinance no. 36/2007 – Official Monitor no. 335 from 17 May 2007. See [http://www.dataprotection.ro/index.php?option=com\\_content&task=view&id=97&Itemid=57](http://www.dataprotection.ro/index.php?option=com_content&task=view&id=97&Itemid=57) and [http://legi-internet.ro/blogs/index.php?title=doua\\_vesti\\_bune\\_de\\_la\\_anspdcp&more=1&c=1&tb=1&pb=1](http://legi-internet.ro/blogs/index.php?title=doua_vesti_bune_de_la_anspdcp&more=1&c=1&tb=1&pb=1)

16 According to ANSPDCP 2008 annual report available at <http://www.dataprotection.ro/servlet/ViewDocument?id=499>

17 See EDRI-gram 7.2: Romania: Is really privacy a topic in the public debate?, 28.01.2009 <http://www.edri.org/edri-gram/number7.2/romania-privacy-in-public-debate>

The same study reveals that Romania is number one in EU countries with the percentage of the people (47%) not knowing that there are laws allowing you to have access to your personal data kept by others.

### **I.3. Other Campaigns**

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

The beginning of 2009 has been more agitated, with the new data retention law in place and the launch of the biometric passport that has inflated a part of the public opinion who was very actively and aggressively against the new provisions, mainly due to their religious beliefs. These events are detailed in the attached sheets.

The data retention law was challenged, via a unconstitutional motion in a regular trial. The Constitutional Court (CCR) declared<sup>18</sup> the whole law as unconstitutional because it breaches the right to correspondence and to privacy. Even though the CCR has no prior jurisprudence in the field of privacy protection, the court explained that the principle of limited collection of personal data is emptied through this new regulation that obliges a continuous retention of traffic data for 6 months.<sup>19</sup> "The legal obligation that foresees the continuous retention of personal data transforms though the exception from the principle of effective protection of privacy right and freedom of expression, into an absolute rule. The right appears as being regulated in a negative manner, its positive role losing its prevailing character."

### **I.4. Summary of the files**

In the current study, based on the common matrix grid established in the meeting with all the other Project partners, we will detail in special files the following issues:

#### **- Mobility and transportation**

The biometric passport has been introduced in a pilot project in Romania at the beginning of 2009, but it has not been welcomed by a part of the population. The file is trying to identify the data protection issues that were created by the implementation of this project available in other European countries.

#### **- Biological identity**

The Romanian DNA database is a relatively young project, that suggest the creation of a database with DNA profiles in order to prevent future crimes and to identify more easily the new crimes being committed by recidivists. There are still a lot of question marks in the project, as details are not set up for the moment. A Constitutional Court decision has confirmed the legality of the current procedures.

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18 See EDRI-gram 7.23: Romanian Constitutional Court decision against data retention 2.12.2009  
<http://www.edri.org/edriogram/number7.23/romania-decision-data-retention>

19 Constitutional Court Decision no 1258 of 8 October 2009 (unofficial English translation, 23.11.2009)  
<http://www.legi-internet.ro/english/jurisprudenta-it-romania/decizii-it/romanian-constitutional-court-decision-regarding-data-retention.html>

- **Interpersonal communications**

The electronic communication data retention directive and its law implementing it in Romania has been one of the major privacy-related topic in the public eye in the beginning of 2009, but started only after the law was in force.

- **Social networks as new gate keepers of communications**

Social networks in Romania do not appear publicly as a major source of concerns in relation with the privacy of its users, but the current figures shows that this could be a future problem, taking into consideration the large number of minor using these social networks and the fact that the most important one used in Romania is based in US.

### **I.5. Conclusions**

Romania has a rather young experience in the field of protecting privacy. With most of the data protection legislation being implemented as a process of the European integration , there is still very limited information on the dangers related to privacy, but also on the data protection rights for citizens or the data protection authority attributions.

There is a strong need of raising awareness on privacy issues at all segments of the population. Since the Internet and social networks usage is very high for the teenage segment, a special need on how to protect online and where you don't need to reveal the personal information is especially necessary. The practical experience of the current team in working with teenagers<sup>20</sup> in relation with Internet aspects underlines the necessity of privacy-related information in Internet usage. All the current knowledge in relation on a proper usage of Internet is gained through self-teaching and friends recommendations.

Enforcing the present status of the Romanian Data Protection Authority, both in terms of financial and human resources, is a strong necessity in order to allow a successful application of the data protection legislation. The present capacity of the Authority to cover the entire country is doubtful, therefore regional presence should also be encouraged.

At the same time, a legislative change for more powers to the Data Protection Authority is necessary, at least in terms of obligatory opinion on any government project that has data protection implications and in terms of obligatory publication of its results on the DPA's website.

There is also a general lack of the public administration to deal with the new projects, especially in the domains of secondary legislation that needs to be adopted, where the current practices need to be regulated. Unfortunately, these very long delays are not due to a need to better understand the problems or public debates, but to an incapacity of the public administration staff to deal with all current problems. This leads in the end to wrong application of the current legal framework or ad-hoc rules, which are contrary to the data protection principles.

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20 Bogdan Manolea participated a Project on Journalism& Internet with the Center for Independent Journalism, Bucharest. Target audience: 60 teenagers, 15-19 years old from 3 major cities in Romania: Bucharest, Constanta and Craiova. Project implemented in April – July 2009

## II. Mobility Fact Sheets

### II.1. Electronic Passport : ePass

<b>THEME</b>	<b>Digital Identity</b>
<b>Identification of technology</b>	<b>Biometrics</b>
<b>Technology used/tool</b> (For each teams, a card pro tool)	<b>Electronic Passport , the Romanian biometric passport</b>
Country/ use area	Romania. For now it is being granted only in the Ilfov county (smallest in Romania), the application at the entire country level was delayed until November 2009, due to financial problems
Frame of use	Normal passport uses: travel and identity document
Population concerned: target and age	Nationals over 6: a 5-years passport, with biometrics National under 6: a 3-years passport, WITHOUT fingerprints
Trends (measured / supposed)	The biometric passport is an obligation in EU countries (Council Regulation (EC) No 2252/2004 of 13 December 2004). Romania included the legal dispositions regarding electronic passport with the General Emergency Ordinance 207 from 4.12.2008. According to art. 7, the biometric elements are the facial image and the digital impression of 2 fingerprints.
Known or potentials dangers /Risks	Usual dangers related to biometric IDs and to RFID chips. The present implementation in the pilot project is infringing the Data protection act, as revealed by an Inspection Report of the Romanian Data Protection Authority – DPA. Thus there are no procedures that explain how the biometric data can be gathered. The Passport Authority did not notify the DPA. There is no special consent, even though the data collected is sensitive. The Ilfov authorities gathered 10 fingerprints and could not prove what 2 fingerprints have been put on the chip. The General Passport Division(GPD) could not explain why they need to keep the data for 30 days and why did they kept all the applications since the beginning of the year. GPD didn't have enough security measures implemented (each user to have a username, password, access card). There were no access logs. All the major problems presented above were rectified by the Authorities after is Inspection of the Romanian DPA.
others	
	<b>Generated data bases</b>
Associated data base/ creation (a line pro database)	No central database Fingerprints are only in the ePass RFID chip. They are destroyed after their inclusion in the chip. NB. Information below in the same section are related to the RFID chip, not to database.
What justifies the inscription in the file /Risks?	Mandatory feature of the electronic passport, after it will be used in the whole country

Purposes /contents, main data included / Risks?	<p>Purposes: Claimed purpose is higher security, fight against identity fraud,. It is also an obligation under EU regulation.</p> <p>Content:</p> <ul style="list-style-type: none"> <li>- biographical data (first name and family name, date of birth, sex, nationality of the document holder, National Code (CNP), Signature)</li> <li>- document-related data: serial number, issuing state, document type and expiry date,</li> <li>- height, eye color, residence address and shadow picture with inkjet printing</li> <li>- (biometrics) digitized facial photograph and 2 fingerprints</li> </ul>
File masters? Risks?	There are security policies in place; the scanned fingerprints are not kept by the collection Agency, only by the National Center that produces the Passport. They are kept for a limited period of time, after the passport has been released to ensure that the data can be corrected.After the period of time has passed, the data is erased.
Who accesses the files/ Sharing of the data base? Access limits? /Risks	Border police when reading the RFID chip at the frontier There are access limitations in the security procedures.
Data retention delays/ risks Right to be forgotten	The passport is valid 5 years for persons above 6 and 3 years for others. There have been extensive discussions if an alternative is not possible – i.e. To have a simple passport, without biometric identifiers. The solution in the law is a simple temporary passport that can be obtained in special circumstances. One of the circumstances is you have no time to wait until the new electronic passport is ready. However, this passport is valid just for 12 months.
Rights to know or to modify data?	Individual may know or modify the data according to the Data protection act.
Covert purposes/ Risks/uncontrolled future evolution	Risks (related to biometrics): false positives and false negatives. Improper implementation of the law, not respecting the data protection principles. For now, it has been implemented only at the Ilfov county, there still need to be implemented in other 41 counties.
Others (interconnections...)	
<b>Legislation in application</b>	
Law /rules / others (?) (implemented for this data base or this technology)	EU Council Regulation (EC) No 2252/2004 of 13 December 2004. ICAO technical standards for passports. Law 2004/2005 regarding the free circulation of Romanian citizens abroad, as modified several times, including through The Emergency Ordinance 207/2008. The Emergency Ordinance 207/2008 was approved by the Parliament by law 264/2009.
If revision of the regulation: reasons? Result: improvement or aggravation	The Ministry of Internal Affairs is obliged to pass the Secondary Legislation (called Methodological Norms) that need to specify how the biometrics are taken and that needs to respect the Data protection legislation.

(compared to the protection of the DP)	
Conformity with the European right (Charter of fundamental rights, directives...)	Not challenged.
Others	
<b>This tools and young public or young adults</b>	
How far are young people concerned?	Not specifically targeted. Children under 6 protected since their fingerprints are not taken. The Romanian DPA insisted that the age limits for taken fingerprints should be between 14 and 79.
Awareness of issues or of risks	Limited awareness on data protection issues.
Indifference or reaction	Strong adverse reaction from a part of the public, mainly due to their religious beliefs. Several people claimed for civic disobedience. Several public demonstrations until May 2009.
Awareness campaigns/ results	There were several blogs that tried to publish information related to the dangers of biometric passports, most of them mixed with orthodox religious opinions and others on a topics related to a plan of total control from the State. The Romanian Orthodox Church was forced to speak on the subject. It considered that the present Electronic Passports are fine, but asked the legislators to find solutions for people that did not want to have Passports with biometrics.
Good practices	N/A
Campaign to be led. On which themes?	There were different type of actions against the Chip-based passports, taken especially by some Orthodox ad-hoc groups. This included a public petition against the biometric passports that was submitted on 17 September 2009 asking for a referendum on the matter. (without any effect so far)
Others	
<b>Conclusions</b>	The EU Regulation has been an opportunity to implement or to enlarge the routine use of biometrics at national level. Romania has been very late in implementation, this is why the local application was done in a hurry and with numerous mistakes and misunderstandings. The age-limit was never publicly debated, except for unpublic DPA opinion. The vivid reaction of a part of the population showed that it would be difficult to implement on the short term the electronic ID card, something that has been on the Government plans for some time. There is a real concern if the implementation of the electronic passports will respect the personal data legislation, due to the lack of training in this field for all people involved.
Recommendations	Need for strong limitations at EU level on the use of biometrics, especially with regards to children and with regards to centralized databases.
References	Interview with the Romanian DPA, Ms. Georgeta Basarabescu on 20.08.2009 Romanian Data protection Authority <a href="http://www.dataprotection.ro/">http://www.dataprotection.ro/</a> EDRi-gram 7.3: Romania: Protests against biometric passports

<http://www.edri.org/edri-gram/number7.3/romania-biometric-passports-protests>

General Passport Division

<http://www.pasapoarte.mai.gov.ro>

Emergency Ordinance 207/2008

[http://www.pasapoarte.mai.gov.ro/pas\\_lege207.htm](http://www.pasapoarte.mai.gov.ro/pas_lege207.htm)

Emergency Ordinance 94/2008

[http://www.dreptonline.ro/legislatie/oug\\_circulatie\\_pasapoarte\\_electronice\\_docum\\_ente\\_calatorie\\_94\\_2008.php](http://www.dreptonline.ro/legislatie/oug_circulatie_pasapoarte_electronice_docum_ente_calatorie_94_2008.php)

Law

Romanian DPA Report on electronic passports

<http://www.nunemaispionati.org/carti-documentare/122-raport-mircea-geoana-anspdcp>

Secret report on biometric passports

<http://victor-roncea.blogspot.com/2009/05/raport-secret-de-pe-masa-lui-geoana.html>

Chamber of deputies Adopted OUG on the introduction of biometric passports

[http://www.realitatea.net/camera-deputatilor-a-adoptat-oug-privind-introducerea-pasapoartele-biometrice\\_546517.html](http://www.realitatea.net/camera-deputatilor-a-adoptat-oug-privind-introducerea-pasapoartele-biometrice_546517.html)

Legislative Process – Chamber of Deputies – OUG 207/2008

[http://www.cdep.ro/pls/proiecte/upl\\_pck\\_proiect?idp=10016](http://www.cdep.ro/pls/proiecte/upl_pck_proiect?idp=10016)

Report on Anti-chip campaign

<http://atitudini.com/bilant-al-campaniei-anti-cip/>

### III. Biological Identity Fact Sheets

#### III.1. National System of Genetic Data (SNDGJ)

<b>THEME</b>	<b>Biological identity</b>
<b>Identification of technology</b>	<b>DNA</b>
<b>Technology used/tool</b> (For each teams, a card pro tool)	<b>National System of Genetic Data (SNDGJ)</b>
Country/ use area	Romania. The database is centralized at the Forensic Institute – General Police Inspectorate
Frame of use	Romanian Police, Law enforcement authorities, Romanian Secret Service (SRI), Other law enforcement authorities from countries where there is reciprocity or international agreements.
Population concerned: target and age	<p>Samples may be taken from an identified individual that is a suspect for some specific crimes, from convicted criminals of specific crimes and samples from a crime scenes. The list of crimes if foreseen in the law 76/2008. Samples can also be taken from other persons that might be suspects or to be eliminated from the case, but they are just checked against the database and their data is not registered in the database.</p> <p>For people under 14 years , there is necessary the written agreement of a parent or tutor.</p> <p>Taking the sample is done only with the subject consent. If the subject does not consent, the evidence can be taken by force only by a decision of a judge. The Romanian Constitutional Court has decided this is possible and is in agreement with the constitutional right to private life.</p>
Trends (measured / supposed)	Estimations say that the database is young, with just some thousands objects. It is unclear though, how the data was obtained before the law was in force. The Institute of Legal Medicine (IML) did, in practice, DNA tests and hold DNA samples.
Known or potentials dangers /Risks	<p>Dangers and risks inherent to DNA and other biometric databases: DNA matches between crime scenes and individuals on the Database include matches with victims and passers-by and false matches, so equating matches with criminals is misleading.</p> <p>In addition, transfer to other countries of profiles to other countries is increasing (inter alia through the introduction of main provisions of Prüm Treaty in EU legislation).</p> <p>The secondary legislation that will ensure the respect of personal data processing principles, is not yet in place. Current procedures are unknown.</p>
others	
<b>Generated data bases</b>	
Associated data base/ creation	National System of Genetic Data (SNDGJ)

(a line pro database)	
What justifies the inscription in the file /Risks?	Crime scene or conviction for some crimes. The list of crimes (30 crimes in Annex 1 of law 76/2008) are generally violent crimes or sex and drugs-related crimes.
Purposes /contents, main data included / Risks?	DNA samples from crime scenes and non coding DNA profiles of individuals. Not available what other additional information is saved in the database.
File masters? Risks?	Forensic Institute – General Police Inspectorate
Who accesses the files/ Sharing of the data base? Access limits? /Risks	Not clear how the access to the database will be made. This should be explained in the secondary legislation, which was not prepared yet. DPA hasn't been consulted yet.
Data retention delays/ risks Right to be forgotten	For convicted criminals – data is kept until 60 years of age. If they died before 60, the data is kept for 5 more years. For suspects in cases of special crimes, the data is kept for an indefinite period. If the suspect is considered innocent, the data will be deleted, by decision of the Prosecutor or Judge (depending on the level of the trial). For cases of witnesses or other persons present at a crime or to identify an unidentified person, the data collected is not entered in the database.
Rights to know or to modify data?	Yes, according to the Data protection Act – first a request to the competent Authority, if no answer is received in 15 days, another complaint to the DPA.
Covert purposes/ Risks/uncontrolled future evolution	Use of the database by the police as a routine intelligence tool, in search for a better ratio of solved crimes and crime prevention strategy.
Others (interconnections...)	n/a

#### **Legislation in application**

Law /rules / others (?) (implemented for this data base or this technology)	Law 76/2008 regarding the National System of Genetic Data (SNDGJ) – entered in force on 14.10.2008 Constitutional Court Decision no 485 from 2 April on the exception of non-constitutionally of art 5 para (3) from law 76/2008
If revision of the regulation: reasons? Result: improvement or aggravation (compared to the protection of the DP)	There is still the secondary legislation that needs to be produced by the Ministry of Internal Affairs and the Ministry of Justice. According to the initial law, it needed to be ready by 14.11.2008.
Conformity with the European right (Charter of fundamental rights,	The European Court of Human Rights has ruled that it is illegal for the UK Government to keep all this personal information from innocent people (Marper case, 4 December 2008).

directives...)	
Others	
<b>This tools and young public or young adults</b>	
How far are young people concerned?	Not directly available.
Awareness of issues or of risks	No awareness, law applicable on limited cases due to financial problems.
Indifference or reaction	Total indifference
Awareness campaigns/ results	N/A
Good practises	None
Campaign to be led. On which themes?	None
Others	
<b>Conclusions</b>	The Romanian law on DNA database is generally good. What worries from a data protection point of view is the practice of getting DNA before the law was in place. It is also interesting how the law is applied today, when the secondary legislation is not in place.
Recommendations	Strong guarantees should be adopted at EU level especially regarding government use of biometric and genetic data.
Références	<ul style="list-style-type: none"> <li>● Interview with the Romanian DPA, Ms. Georgeta Basarabescu on 20.08.2009</li> <li>● Law 76/2008 regarding the National System of Genetic Data (SNDGJ) – published in the Official Monitor on 14.04.2008</li> <li>Constitutional Court Decision no 485 from 2 April 2009 on the exception of non-constitutionality of art 5 alin (3) from law 76/2008 - Official Journal 289 from 04 May 2009</li> <li>Criminalistic Institute – General Police Inspectorate</li> <li><a href="http://www.politiaromana.ro/Criminalistic/index.htm">http://www.politiaromana.ro/Criminalistic/index.htm</a></li> <li><a href="http://www.timpolis.ro/index.php?page=column&amp;nr=1546&amp;r=22&amp;a=1">Timpolis – Police DNA Database – still a desire (10.05.2009)</a></li> <li><a href="http://www.timpolis.ro/index.php?page=column&amp;nr=1546&amp;r=22&amp;a=1">http://www.timpolis.ro/index.php?page=column&amp;nr=1546&amp;r=22&amp;a=1</a></li> <li><a href="http://www.timpolis.ro/index.php?page=column&amp;nr=1546&amp;r=22&amp;a=1">Romanian Police, „FORENSIC SCIENCE” - Modern Criminalistics in Romanian Police - No 2099 from 26 July 2009</a></li> <li>- ECHR Judgment, Case of S. and Marper v. The United Kindgom, 04/12/08</li> <li>(<a href="http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&amp;portal=hbkm&amp;action=html&amp;highlight=&amp;sessionid=27427778&amp;skin=hudoc-en">http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&amp;portal=hbkm&amp;action=html&amp;highlight=&amp;sessionid=27427778&amp;skin=hudoc-en</a>)</li> </ul>

## IV. Interpersonal Communications Fact Sheets

### IV.1. Electronic Communication Data retention

THEME	Interpersonal Communications
Identification of technology	Data Retention
Technology used/tool (For each teams, a card pro tool)	Retention of Data during an electronic communication
Country/ use area	Romania
Frame of use	Telecom operators (including Internet service providers) were required to retain traffic data for 6 months on their servers, so that government agencies may access them. Law was declared unconstitutional by the Romanian Constitutional Court (CCR) and is, at this moment, suspended.
Population concerned: target and age	All population using telecom services, all telecom operators subscribers and users of fixed and mobile telephony, and internet services.
Trends (measured / supposed)	The trend for data retention at national level and at the EU level and mutually reinforcing and justifying each other. When the 1997 Directive was in force, telecom operators had the obligation to erase or anonymize communication data after the communication was completed. They could only keep these data for billing and network management purposes. The revision of this Directive in 2002 opened the way for governments to access these data. Further in 2006, the data retention Directive has rendered mandatory the retention of communication data for a period varying between 6 and 24 months. No data at the Romanian level
Known or potentials dangers /Risks others	Mass surveillance and profiling of interpersonal communications and networks.
<b>Generated data bases</b>	
Associated data base/ creation (a line pro database)	Telecom operators are required to retain data on their own servers, and respond to public authorities requests. There is no plan to do a central database, at least in the current framework
What justifies the inscription in the file /Risks?	Use of telecom or electronic communication means: fixed and mobile phones, emails, instant messaging, ...
Purposes /contents, main data included / Risks?	Purposes: Billing and network management purposes by telecom operators, plus use by public authorities, as provided by the Data Retention law Content: - Phone calls ((landline, mobile or VoIP): Date, time, length and involved numbers of all phone calls - Mobile phone calls: additionally, the location of the phone at the time of the call,

	<p>the IMSI code of the phone and SMS connection data</p> <ul style="list-style-type: none"> <li>- Internet access: IP address, date, time and length of the connection, and the line which was used.</li> <li>- E-mail: e-mail-addresses involved and the header of each e-mail (only if there is and email address from an ISP)</li> </ul>
File masters? Risks?	<p>Telecom operators (including Internet Service Providers). Risks are high for the security of data, as well as for misuses of the data by commercial companies.</p> <p>No specific info on the security requirements for telecom operators, the general standards established by the Electronic Communication Authority (ANCOM) should apply</p>
Who accesses the files/ Sharing of the data base? Access limits? /Risks	<ul style="list-style-type: none"> <li>- the police, courts and public prosecutors for the prosecution of crime</li> <li>- the police for the prevention of substantial dangers to public safety</li> <li>- secret services for intelligence purposes</li> </ul> <p>The access of this information for intelligence purposes by secret services as well as by the police for so-called ‘prevention’ purposes involves a high risk of profiling innocent users.</p> <p>The details of accessing the stored data should have been detailed by secondary legislation, which is not yet in place. A draft on the accession of data for voice services, has been made available for public comments by the Ministry of Communication and Information Society for some months.</p> <p>In the end, the secondary legislation was never in place until the CCR decision</p>
Data retention delays/ risks Right to be forgotten	<p>6 months.</p> <p>The data should be irrevocably deleted or made anonymous after the 6 months through an automated process. ( as the draft secondary legislation foresees – not in force yet)</p>
Rights to know or to modify data?	<p>According to the Data Protection Act.</p>
Covert purposes/ Risks/uncontrolled future evolution	<p>Routine intelligence. Other risk is related to the increasing difficulty to differentiate between communication data and content data, especially with new and future communication services.</p>
Others (interconnections...)	
<b>Legislation in application</b>	
Law /rules / others (?) (implemented for this data base or this technology)	<p>Lege privind reținerea datelor generate sau prelucrate de furnizorii de servicii de comunicații electronice destinate publicului sau de rețele publice de comunicații, precum și pentru modificarea Legii nr. 506/2004 privind prelucrarea datelor cu caracter personal și protecția vieții private în sectorul comunicațiilor electronice (Law on data retention 298/2008)</p>
If revision of the regulation: reasons? Result: improvement or aggravation (compared to the protection of the DP)	<p>The law could be revised after protests from civil society groups, but also the General Prosecutor who considered that the law in the current format is too difficult to be applied.</p> <p>The Romanian Government announced that it will “suspend” the law, but no official act was published in the Official Monitor.</p>

Conformity with the European right (Charter of fundamental rights, directives...)	An constitutionality exception on this law was raised in a trial before the Bucharest Tribunal and the case was referred to the Constitutional Court in order to decide. The decision of the CCR was taken on 8.10.2009 and considered the entire law as unconstitutional, claiming significant breaches of the articles regarding the freedom of correspondence, freedom of expression and the right to privacy.
Others	n/a
<b>This tools and young public or young adults</b>	
How far are young people concerned?	Not specifically targeted, but they are concerned to a large extent since electronic communications and instant messaging systems are their preferred modes of communication.
Awareness of issues or of risks	Limited awareness, mostly after the law entered into force. There was also a large degree of misunderstanding the law, several politicians and people claiming that it referred to the content of communications.
Indifference or reaction	Some reactions, but not on the privacy aspects.
Awareness campaigns/ results	An constitutionality exception on this law was raised in a trial before the Bucharest Tribunal and the case was referred to the Constitutional Court in order to decide. The decision of the CCR was taken on 8.10.2009 and considered the entire law as unconstitutional, claiming significant breaches of the articles regarding the freedom of correspondence, freedom of expression and the right to privacy.
Good practices	None
Campaign to be led. On which themes?	n/a
Others	
<b>Conclusions</b>	The EU Data retention Directive has been an opportunity to implement or to enlarge data retention at national level. No info to what extent the present law is useful for law enforcement agencies.
Recommendations	Campaign at EU level against Data retention Directive.
References	Law on data retention 298/2008 - Legea nr. 298/2008 privind retinerea datelor generate sau prelucrate de furnizorii de servicii de comunicatii electronice destinate publicului sau de retele publice de comunicatii, precum si pentru modificarea Legii nr. 506/2004 privind prelucrarea datelor cu caracter personal si protectia vietii private in sectorul comunicatiilor electronice – Official Monitor, no 780 from 21.11.2008 , available also at <a href="http://www.legi-internet.ro/legislatie-itc/date-cu-caracter-personal/legea-2982008-privind-pastrarea-datelor-de-traffic-informational.html">http://www.legi-internet.ro/legislatie-itc/date-cu-caracter-personal/legea-2982008-privind-pastrarea-datelor-de-traffic-informational.html</a>  Interview with the Romanian DPA, Ms. Georgeta Basarabescu on 20.08.2009 Draft Govt Decision on keeping traffic data for voice services <a href="http://www.mcsi.ro/Legislatie/Proiecte-legislative-romanesti/Hotarare-pentru-aprobarea-Normelor-metodologice/norme_pt_publicare_pe_site_final-1-">http://www.mcsi.ro/Legislatie/Proiecte-legislative-romanesti/Hotarare-pentru-aprobarea-Normelor-metodologice/norme_pt_publicare_pe_site_final-1-</a> Bogdan Manolea, Comments on Data retention (only in Romanian) <a href="http://legi-internet.ro/blogs/index.php/c19/c23/">http://legi-internet.ro/blogs/index.php/c19/c23/</a> Ziua, How the mass incerception law is applied (28.01.2009)

<http://www.ziua.ro/display.php?id=248494&data=2009-01-28>

Adevarul, Law on keeping telecom communications will be challenged at the Constitutional Court (only in Romanian)

<http://www.adevarul.ro/articole/legea-stocarii-datelor-telefonice-la-curtea-constitutionala.html>

EDRi-gram 6.22: Romania adopts data retention law

<http://www.edri.org/edri-gram/number6.22/data-retention-adopted-romania>

V. EDRi-gram 7.2: Romania: Is really privacy a topic in the public debate?

<http://www.edri.org/edri-gram/number7.2/romania-privacy-in-public-debate>

Constitutional Court Decision no 1258 of 8 October 2009 (unofficial English translation, 23.11.2009)

<http://www.legi-internet.ro/english/jurisprudenta-it-romania/decizii-it/romanian-constitutional-court-decision-regarding-data-retention.html>

Constitutional Court Decision no 1258 of 8 October 2009 (only in Romanian, 23.11.2009)

[http://www.ccr.ro/decisions/pdf/ro/2009/D1258\\_09.pdf](http://www.ccr.ro/decisions/pdf/ro/2009/D1258_09.pdf)

EDRi-gram: 7.23 Romanian Constitutional Court decision against data retention

<http://www.edri.org/edri-gram/number7.23/romania-decision-data-retention>

## VI. Social Networks Usages

### VI.1. Social Networks in Romania

Romania has a special situation in the field of usage of social networks. The most used social networking is hi5.com (it ranks as the fourth most visited website according to alexa.com<sup>21</sup>), even though the website was not translated for a long period into Romanian, or have any visible specific feature that would make him especially popular for this country.

According to their own data, revealed by their advertising bureau in August 2009<sup>22</sup>, Hi5 had 2.25 millions of active accounts from Romania, that is estimated to have 6-7 million Internet users. Hi5 also announced that the most active segment are the users with ages between 18-25 (45.9%) of the users, then the users between 13-18 years old (26%) and 25-35 years (20.9%).

It worth also revealing that most of the users (51%) were female users in December 2008, while in August 2009 the number of male users was much bigger – being now 56% of the total Romanian users.

It was clear that Romania is one of their target markets, after they launched a support service in Romanian (2006) and they started selling advertising targeting just Romanian users.<sup>23</sup> Several activities were taken by HI5 owners in the autumn of 2009 to better promote their network as an advertising opportunity. This include the inclusion of the site<sup>24</sup> in the Romanian Internet publishing industry system (called SATI). The first data made public in October and November 2009 proved the fact that hi5.com is one of the biggest websites visited from Romania.<sup>25</sup> The figures from November 2009 show a 4.3 million uniques clients that accessed the website from Romania with approx. 2 billion pageviews.

Despite its real success to the Romanian Market, Hi5 has practically ignored the Romanian privacy laws or obligations. Their privacy policy web page in Romanian<sup>26</sup> lacks any reference to Romanian laws or a registration number to the Romanian Data protection authority. The policy informs users that their data may be transferred to third countries (without naming them besides USA), that they do not collect personal data for children under 13 (while the age in Romania is 18) and does not contain clear information about user's rights in terms of their collected data. Any questions can be directed to a San Francisco-based address.

There also used other social networks, some of them local developments<sup>27</sup> - where the most known are the ones developed by Neogen, which is also the owner of the biggest social

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21 See info at <http://www.alexa.com/topsites/countries/RO>, website visited on 10 August 2009

22 Info in Online Flash – August 2009 , newsletter of Arbomedia, story also on <http://refresh.ro/2009/08/hi5-inregistreaza-peste-2-250-000-de-conturi-active-in-romania/>

23 According to information published at [http://economie.hotnews.ro/stiri-media\\_publicitate-2253086-reteaua-sociala-online-hi5-vinde-romania-prin-arbo.htm](http://economie.hotnews.ro/stiri-media_publicitate-2253086-reteaua-sociala-online-hi5-vinde-romania-prin-arbo.htm)

24 See news on 7.10.2009 at <http://www.money.ro/new-media/reteaua-hi5-com-va-intra-in-sati-suprematia-trilulilu-ro-ia-sfarsit.html>

25 See the stats publicly available at [http://www.sati.ro/index.php?page=rezultate\\_site&filter\\_period=2009-11-01&filter\\_type\\_period=1&filter\\_category=0&o=clients&sort=DESC&siteid=nespecificat&letter=toate#nespecificat](http://www.sati.ro/index.php?page=rezultate_site&filter_period=2009-11-01&filter_type_period=1&filter_category=0&o=clients&sort=DESC&siteid=nespecificat&letter=toate#nespecificat)

26 See the page at <http://www.hi5.com/friend/displayPrivacy.do>

27 See and indicative list at <http://www.submitsuite.ro/blog/lista-retele-sociale-romania>

networking site in Moldova.<sup>28</sup> Others are international social networking websites – such as Linked In (for professional networking), MySpace or Facebook.

As regards the number of the Facebook users based in Romania were<sup>29</sup> in July 2009 just 227 000, but this means almost a double number from the figures in April that showed just 115 000 users. The social networking is used less by young teens, with just 17 000 of the Romanian registered users on Facebook being under 18 years old.

The trend is confirmed by our survey applied to young people<sup>30</sup>, that confirmed the Hi5.com as the most popular network amongst them, with 80% of the respondents saying that they have an account on this website.

## **VI.2. Information Commissioner and social networking**

According to the Romanian Data Protection Authority, they didn't<sup>31</sup> receive any complaints in relation with the social networks from Romanians by August 2009. The authority did inform, through its website, about the special conditions in which it is recommended to process children's personal data, according to the Article 29 Opinion 2/2009

## **VI.3. Local reactions (Campaigns, cases, etc.)**

There are just minor reactions in Romania to the privacy problems that the social network usually generate for the Internet users.

Just a few campaigns have been launched with basic advice about the use of social networks by children and the most prominent contains the information provided by sigur.info<sup>32</sup>, which is the Romanian program of raising awareness for children on the Internet issues. There are also other materials, produced by private companies<sup>33</sup> informing children, parents and educators on some dangers of the Internet, but they touch sometimes indirectly the social networks.

According with the same survey mentioned above, the major issue highlighted by a majority of the respondents was related to the fact that the user does not have any control on the data they have provided, therefore the company or other malicious persons might use the data and info in inappropriate uses.

There have been several public cases in Romania on that matter, especially on photos taken from several public profiles on hi5 and then republished on other websites. There are two quite popular websites that are focusing on this practices, by re-publishing different pictures especially from hi5.com with ironic and satiric comments<sup>34</sup>.

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28 The sites in Romanian are noi2.ro and colegi.ro. The major website in Moldova is faces.md

29 Figures provided by Ionut Oprea at <http://clickio.ro/2009/07/internet/numarul-romanilor-pe-facebook-s-a-dublat-din-aprilie-in-iulie/>

30 Anonymous survey developed by Bogdan Manolea in a Project on Journalism with the Center for Independent Journalism, Bucharest. Target audience: 60 teenagers, 15-19 years old from 3 major cities in Romania: Bucharest, Constanta and Craiova.

31 Interview with the Romanian DPA, Ms. Georgeta Basarabescu on 20.08.2009

32 <http://www.sigur.info/index.php?proiect-sigur.info/descriere-proiect-sigur.info/hotline.html>

33 Produce by Orange, Microsoft or Cosmote, available at <http://www.sigur.info>

34 Available at <http://pitzipoanca.org> and <http://cocalari.com/>