

INSTRUCTION

No. 17, date 11.05.2012

**Official translation of the text published
In the Official Gazette No. 64, date 13.06.2012¹**

ON

“DEFINITION OF RETENTION PERIODS OF PERSONAL DATA PROCESSED IN THE ELECTRONIC SYSTEMS BY THE STATE POLICE BODIES FOR CRIMES PREVENTION, INVESTIGATION, DETECTION AND PROSECUTION PURPOSES”

Pursuant to article 30 clause 1, letter c and article 31, clause 1 letter ç of the Law No. 9887, date 10.03.2008 “On protection of personal data”, the Commissioner for Protection of Personal Data gives the following

INSTRUCTIONS:

The implementation of some rules for establishing the retention period of personal data in electronic systems, used by the State Police organs for the crimes prevention, investigation, detection or prosecution purposes

I. Scope of Application

1. The personal data which are processed based on one or some specific purposes shall not be retained for a period longer than necessary for the fulfilment of such purpose or purposes. This is the principle upon which the police work shall be based upon regarding the retention period of personal data kept by them.

2. The Police personnel shall observe all procedures of personal data retention period to assure that personal data are processed updated, and those which are no longer needed are deleted from the database.

3. This Instruction applies to all electronic systems of the State Police and, in particular, of the Judicial Police, used for the prevention, investigation, detection and prosecution of crimes.

¹ The translation was commissioned by the EU funded Project "Strengthening of the Data Protection Commissioner office in Albania, for alignment with EU standards"

II. General rule

1. Personal data shall be erased or made anonymous when they are no longer required for the purpose or purposes for which they were lawfully collected by the State Police and, in particular, by the Judicial Police.

III. Revision periods

1. The need for the continuation of retention of personal data kept in electronic form is assessed every:

- a) Two years for personal data related to crimes with maximum custodial sentences of two years;
- b) Three years for personal data related to crimes with maximum custodial sentences of ten years;
- c) Five years for data related to crimes with maximum custodial sentences of over ten years

2. If the personal data involved in a revision process are appraised to be retained for purposes of prevention, investigation, detection and prosecution of crimes with different maximal custodial sentences, the revision period shall correspond to the maximal sentence provided for the most serious crime.

3. If after the revision of the data retention period, it is decided to retain them in the electronic systems, a new revision period will start

4. The decision on the continuation of the data retention is logged in a special registry for the only purpose of checking and verifying its lawfulness according to the legislation into force and, in particular, the rules established in this act. Data stored in the log file shall, at least, include the number, date and time when the decision was taken, the reason for the keeping of the data, as well as a clear identification of the police officer who took the decision

5. The General Directorate of the State Police defines in any case the police officers who shall carry out the assessment and take the decision for the continuation of retention or deletion of the personal data processed.

6. If the retention period of personal data is reviewed three times, after such term, the decision for the revision shall be adopted by the General Director of State Police or the Director of the Police Directorate of the Region (Regions), or the Regional Director of Border Police, unless one of the following conditions applies:

- a) The information on the person has been continuously updated or accessed, in particular, if new information has been added in the last six months;
- b) There are clear indications based on facts that the person belongs to or is closely connected with a criminal or terrorist organisation;
- c) According to relevant scientific or statistical studies, the type of crime, related to the information kept on the person, is very likely to be perpetrated again by him/ her. A clear list of these categories of crimes shall be adopted by the Minister of the Interior.

7. The period for the next revision shall be interrupted during the time the person is serving a custodial sentence, and restarts again once he/she is released from prison.

IV. Criteria for reviewing the continuation need of data retention

1. In determining the need for continuation of personal data retention, the following criteria shall be taken into account:

- a) Age of the data subject, paying special attention to minors and elderly persons;
- b) Spent convictions: In case a person has served his/her term in prison and meanwhile the first revision period has passed, his/her personal data shall be deleted, unless there are evidences which prove that they are necessary for other ongoing investigations. In the case of sensitive data, they shall be deleted, unless they are absolutely necessary to be retained because of other ongoing investigations.
- c) Court decisions, in particular, court decision of acquittal related to specific criminal offences, all the information on the cases shall be deleted, unless there are evidences which prove that they are necessary for other ongoing investigations. In the case of sensitive data, they shall be deleted, unless they are absolutely necessary to be retained because of other ongoing investigations. The same criteria can be applied in the case of amnesties or rehabilitation.

V. Alarms

1. The electronic system of the State Police issues an alarm (alert) two months before the deadline for revision of the retention period of personal data.

2. If the deadline is reached and no positive action for the revision of the retention period of data is taken from the relevant police officer, the personal data shall be deleted.

VI. Data on persons accompanied, detained in the premises of the State Police

1. Personal data related to persons accompanied, detained in the premises of the State Police shall not be kept for more than six months, unless there are very important reasons based on facts which indicate that they are necessary for purposes of other ongoing investigations or judicial proceedings.

2. In case personal data of persons accompanied, detained in the premises of the State Police are kept for more than six months because of necessity for purposes of an ongoing investigation or judicial proceeding, the same rules on revision periods provided for in this Instruction shall also apply.

VII. Registration and supervision

1. The purpose of the log file mentioned in clause 4 of Chapter III is to establish an appropriate control mechanism for carrying out the verification of lawfulness of the decision on the continuation of personal data retention.

2. The data contained in this log file shall be deleted at the same time with the personal data they refer to, unless they are necessary for controls or ongoing judicial proceedings.

3. Audits of the log files are carried out periodically by the Data Processing Centre Directorate to verify compliance with the rules on data retention periods and with the data protection rules.

4. Data in the log file shall be available to the authorities with supervision powers both inside and outside the police and, in particular, to the Commissioner for Protection of Personal Data in Albania.

5. The Commissioner for Protection of Personal Data, during the exercise of its controlling and supervision powers, shall use the information contained in the log file to assure itself of

the lawful processing of personal data by the police, both through *ex officio* inspections and inspection carried out upon complaint from the data subjects.

VIII. Confidentiality

1. All the police structures, persons/employees who are subject to this instruction are obliged to keep the confidentiality and reliability of the data processed during the exercise of their functions, even after the termination of such function.

The State Police is in charge of implementation of this Instruction.

This instruction enters into force three months after its publication in the Official Journal.

Commissioner

Flora Çabej (Pogaçe)