

10.

PROTECTION OF PERSONAL DATARecommendation 890

(Concl(80)318/IV, CM(80)295 Addendum V and CM(81)134)

Decision

The Deputies adopted the following reply to Recommendation 890:

"As stated in the interim reply to Recommendation 890 (Doc.4579), the Committee of Ministers has transmitted Recommendation 890 for opinion to the Steering Committee for Human Rights. Given the various aspects of this problem, and the past and present work of the European Committee for Legal Co-operation in this field, the Committee of Ministers also asked that committee to give an opinion.

The two steering committees, in their respective opinions, agreed that it is not appropriate at the present time to draft a provision on the protection of personal data for incorporation in the European Convention on Human Rights.

The texts of the two opinions, with which the Committee is in agreement, are reproduced below for the Assembly's information.

In transmitting these opinions to the Assembly, the Committee of Ministers hopes that the Convention for the protection of individuals with regard to automatic processing of personal data, opened for signature on 28 January 1981 and so far signed by ten States, will be ratified and applied at the earliest opportunity."

Opinion of the Steering Committee for Human Rights (CDDH)

The Steering Committee noted first of all that the European Court of Human Rights, when considering the right to respect for family life embodied in Article 8 of the Convention, stated that "by proclaiming in paragraph 1 the right to respect for family life, Article 8 signifies firstly that the State cannot interfere with the exercise of that right otherwise than in accordance with the strict conditions set out in paragraph 2.... The object of this Article is 'essentially' that of protecting the individual against arbitrary interference by the public authorities... Nevertheless, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective 'respect' for family life... As envisaged by Article 8, respect for family life implies in particular, in the Court's view, the existence in domestic law of legal safeguards that render possible as from the moment of birth the child's integration in his family". (Judgment of the Court of 13 June 1979 in the Marckx Case, paragraph 31, sub-paragraphs 5 and 6).

The Steering Committee wished to draw attention to the possibility that a similar interpretation in relation to the right of respect for private life might have implications as regards the provision of safeguards against interference with privacy resulting from the use of automatic processing of personal data.

In addition, irrespective of such an interpretation of Article 8 of the Convention, the Steering Committee noted that the Convention for the protection of individuals with regard to automatic processing of personal data, drawn up in the Council of Europe by a Committee of governmental experts under the authority of the European Committee on Legal Co-operation (CDCJ), was opened for signature by the Council of Europe member States on 28 January 1981. This convention has been signed by Austria, Denmark, France, the Federal Republic of Germany, Luxembourg, Sweden and Turkey (1). Its purpose is to secure in the territory of each Party for every individual, whatever his nationality or residence, respect for his rights and fundamental freedoms and in particular his right to privacy, with regard to automatic processing of personal data relating to him (Article 1).

The Steering Committee also took note of the opinion of the European Committee on Legal Co-operation (CDCJ). This latter body felt that before considering any amendment to Article 8 or 10 of the European Convention on Human Rights, it was preferable to acquire a certain amount of experience in the application of the European Convention for the protection of individuals with regard to automatic processing of personal data.

In view of the foregoing, the Steering Committee is of the opinion that there is no justification at the present time for contemplating the possibility of inserting in the European Convention on Human Rights any specific provision on the protection of personal data by amending Article 8 or Article 10 or by adding a new article to the Convention.

(1) Note: On 10 September 1981, the following member States of the Council of Europe had signed this Convention : Austria, Denmark, France, the Federal Republic of Germany, Luxembourg, Norway, Portugal, Sweden, Turkey and the United Kingdom.

Opinion of the European Committee on Legal Co-operation (CDCJ)

1. The protection of personal data has been a constant preoccupation of the European Committee on Legal Co-operation (CDCJ) for the past 10 years.

In 1973, on the proposal of the CDCJ, the Committee of Ministers adopted Resolution (73)22 on the protection of the privacy of individuals vis-à-vis electronic data banks in the private sector. This text was complemented by Resolution (74)29 dealing with the public sector.

2. At its 322nd meeting at Deputy level, the Committee of Ministers decided to open for signature by member States on 28 January 1981, the Convention for the protection of individuals with regard to automatic processing of personal data.

3. These texts lay down the basic principles of protection which should serve as a model to member States when devising a system for data protection in their domestic laws.

These principles of a general character can subsequently be adapted and complemented by specific instruments designed to take into account the requirements peculiar to sectors where special aspects of the problem of data protection arise. A draft Recommendation has been adopted by the CDCJ in the sector of medical data banks and work has already begun on records kept for scientific research or statistical purposes.

4. This sectorial approach seems preferable, since the complexity of the subjects dealt with militates in favour of specific regulations rather than a general solution which could be embodied in an article of the European Convention on Human Rights. It is true that States such as Spain and Portugal have introduced principles of protection into their Constitutions but these principles have to be completed by ordinary laws so as to deal with the specific aspects of the problem. The other States possessing legislation in this field (Denmark, France, the Federal Republic of Germany, Luxembourg, Norway and Sweden) have adopted ordinary laws (1). Austria occupies an intermediate position, having passed a very complete and detailed Act, which makes however the article granting the basic right to data protection a part of the Constitution.

5. The CDCJ considers that, before envisaging amendments to Articles 8 or 10 of the European Convention on Human Rights, it would be preferable to gain some experience in the application of the afore-mentioned Convention for the protection of individuals with regard to automatic processing of personal data.

(1) Note: On 10 September 1981 eight member States had adopted legislation in the field of data protection: Austria, Denmark, France, Federal Republic of Germany, Iceland, Luxembourg, Norway and Sweden.