



TOMIĆ STEVIĆ DULIĆ

ADVOKATSKA KANCELARIJA

TSD NEWSLETTER

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LAW ON PERSONAL DATA PROTECTION

On 04 November 2008, new Law on Personal Data Protection entered into force ("Official Gazette of RS", 97/2008) and its application commenced as of 01 January 2009, whereby the Republic of Serbia finally acquired a law which it lacked in order to achieve European standards in personal data protection.

The Law rests on the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The main principles underlying the new Law are:

1. Limiting personal data processing to the extent that is absolutely necessary

Under the Law, the personal data means any information concerning a natural person, regardless of the form in which it is expressed and the data format, under whose mandate, on whose behalf or for whose account the information is stored, the date when the information originated, the place where the information is stored, the mode of acquiring the information, and regardless of other characteristics of the information.

The Law does not apply to 1) data available to anyone and published in public media or available in archives etc; 2) data processed for family or other personal use that is not available to third parties; 3) data on members of political parties, citizens' associations, trade unions and similar organisations that are processed by such organisations, provided that the member provides a written statement to the effect that certain provisions of the Law do not apply to his or her data processing for a period of time, however not for a period exceeding the duration of his or her membership; 4) data published by a person concerning himself or herself.

Data processing is subject to a consent of the person¹ to whom such data pertain, as well as the purpose to which such consent is granted.

¹ A person is an individual to whom the data relates, who is identified or identifiable by reference to personal name, personal identification number, address code or other mark of their physical, psychological, mental, economic, cultural or social identity.



Exceptionally, data processing without consent is permitted in following cases: 1) for implementation or protection of vital interests of the person or a third party, in particular the life, health and physical integrity; 2) for the purpose of execution of obligations determined by the law, an enactment passed in accordance with the law or an agreement concluded between the person and the controller, as well as for the purpose of preparations with regard to concluding an agreement 3) in other cases as provided under the Law or other regulations passed in accordance with the Law in order to affect a prevailing justified interest of the person, controller² or recipient³; 4) if a government authority should process such data as are necessary for performance of tasks within its competence for the purpose of achieving the goals of national or public security, state defence, protection of rights and freedoms and other public interests etc.

2. Maximum transparency of data processing

Any person whose data are being collected is entitled to be informed of the fact that their data are being processed, who is processing such data, to what purposes, on what legal grounds, etc.

Before commencing the data processing, the controller is obliged to notify the Commissioner for Information of Public Importance and Personal Data Protection of the intention to establish the data filing system, together with the information contained in such data filing system, as well as of any subsequent intended data processing, prior to undertaking the task of processing. This obligation does not apply in cases when special regulations prescribe the purpose of data processing, the categories of data being processed, categories of recipients that will have access to data, and the time period for which such data will be archived.

Any person is entitled to review data concerning him or her, and the right to demand a correction, amendment or erasure of such data.

With the aim of achieving transparency, the new Law provides for Central Register (data filing system register and data filing system catalogue) which is established and kept by the Commissioner for Information of Public Importance and Personal Data Protection.

The Central Register of data filing systems is public and is published on the Internet, and a list of data filing systems is published once a year in the "Official Gazette of the Republic of Serbia".

3. Efficient supervision of the data processing

² Personal data filing system controller is a natural or legal person or the authority processing the data.

³ Recipient is a natural or legal person, or a government authority authorised to use the data under the law or the person's consent.



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and protection of rights

The Commissioner for Information of Public Importance and Personal Data Protection plays the key role in this field. It is an autonomous state authority, independent in the performance of his or her duties, who by virtue of his or her office supervises the application of the Law and also acts as the authority of second instance, ruling upon appeals of persons who believe that their rights under the Law have been violated.

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FOREIGNERS IN THE REPUBLIC OF SERBIA -Required residence and work permits-

I Law on Foreigners

The Law on Foreigners, to be applied as of 01 April 2009, was published in the Official Gazette of the Republic of Serbia No 97/2008 on 27 October 2008.

The new Law on Foreigners which governs the entry, movement and stay of foreigners in the territory of the Republic of Serbia contains a number of new provisions in this field.

A foreigner may enter and stay in the Republic of Serbia with a valid travelling document containing a visa or residence permit. However, under an international treaty or a Government decision, citizens of certain countries may enter the Republic of Serbia even without a visa. Thus, the Decision of the Government on the Abolition of Visas for Entry and Stay in Serbia and Montenegro ("Official Gazette of SM", No. 23/2003) provides that the visas for the entry and stay in Serbia and Montenegro up to 90 days shall be abolished for all types of travel documents for citizens of the following countries: the Federal Republic of Germany, France, Italy, the Netherlands, Belgium, Luxembourg, Great Britain, Ireland, Spain, Portugal, Greece, Denmark, Sweden, Finland, Austria, Switzerland, Norway, Iceland, Monaco, Liechtenstein, Vatican, Andorra, San Marino, Israel, Cyprus, Malta, the Czech Republic, Slovakia, Poland, Slovenia, Lithuania, Latvia, Estonia, Croatia, the United States of America, Canada, Singapore, the Republic of Korea, Australia and New Zealand. Thus a foreigner who does not require a visa for entry into the Republic of Serbia may stay in Serbia up to 90 days during a period of six months, starting from the day of his or her first arrival.

An important new provision of the Law relates to the section governing visas. A visa is a permit for the entry, stay or transit, which a foreigner is obliged to obtain prior to the arrival in the territory of the Republic of Serbia. The visa types are the following:

- VISA A (Airport Transit Visa) may be issued to a foreigner on his or her request. Such visas are



issued for a single or multiple transit through the international transit area of an airport and based on Visa A, a foreigner may stay in such area up to 24 hours per one instance of transit. Exceptionally, the Government of the Republic of Serbia may specify which foreigners in which particular travel routes shall need Visa A, if so required by the reasons of protection of public order or safety of the Republic of Serbia and its citizens.

- VISA B (Transit Visa) is issued to a foreigner for a single, double or multiple transit through the territory of the Republic of Serbia with the term of validity of up to six months, where the duration of stay in the country per one transit may not exceed five days.
- VISA C (Short Stay Visa) is issued for the purpose of tourist, business and other travel for a single, double or multiple entry into the Republic of Serbia, provided that the duration of an uninterrupted stay based on this visa may not exceed 90 days within a period of six months which started on the day of the first entry. A Short Stay Visa with the multiple entry option is issued with the term of validity of up to one year.
- VISA D (Temporary Residence Visa) implies permission for entry into and temporary residence of foreigners in the Republic of Serbia. This type of visa is issued to a foreigner under the conditions set down by the Law on Foreigners with respect to the permission for temporary residence. If a foreigner intends to stay more than 90 days, he/she shall be obliged to obtain Visa D, or to obtain the permission for temporary residence from the competent authority during his/her stay in the Republic of Serbia.

A visa is issued by a diplomatic mission or consular office of the Republic of Serbia.

The types of stay of foreigners in terms of the Law on Foreigners are as follows:

- Stay of up to 90 days - means the stay of a foreigner either without a visa or on the grounds of a visa
- Temporary residence - this type of stay may be permitted to a foreigner whose intention is to stay in the Republic of Serbia longer than 90 days for the purposes of work, employment, performance of economic or other professional activities, enrolling a school, university or advanced education course, scientific research, practical training, participation in the programmes of international exchange of pupils and students, or other scientific/educational activities, family rejoining, and other justifiable reasons. A foreigner is obliged submit an application for temporary residence to the competent authority and in addition to the



application, a foreigner is also be obliged to submit a valid foreign travel document, and other evidence justifying the reasons based on which he/she is requesting the permission for temporary residence. Other requirements that a foreigner is obliged to fulfil in order to obtain the permission for temporary residence include: furnishing the evidence that he/she has sufficient funds to sustain himself/herself, that he/she has health insurance, and that his/her reasons for temporary residence are justified based on the purpose of temporary residence. Temporary residence may be approved for a period of up to one year, and may be extended for the same period.

- Permanent residence - may be permitted to a foreigner who has stayed with no interruptions in the Republic of Serbia for at least five years on account of the permission for temporary residence before applying for permanent residence permit, who has been married to a citizen of the Republic of Serbia, or a foreigner with permanent residence, for no less than three years, who is an underage person in temporary residence in the Republic of Serbia if one of his/her parents is a citizen of the Republic of Serbia or a foreigner with permanent residence, subject to the consent of the other parent and to a foreigner who has ancestral links to the territory of the Republic of Serbia.

The provisions of the Law on General Administrative Procedure shall apply in the decision-making procedure regarding the rights and obligations of foreigners, unless otherwise stipulated by the Law on Foreigners.

II Work permits for foreigners in the Republic of Serbia

This issue is governed by the Law on Employment of Foreign Citizens („Official Gazette of the SFRY“, No. 11/78 and 64/89, „ Official Gazette of the FRY“, No. 42/92, 24/94 and 28/96 and „Official Gazette of the RS“, No. 101/2005-other Law).

This Law provides for requirements for employing foreign citizens, namely:

- Temporary residence permit
- Work permit.

A work permit may be acquired subject to obtaining a temporary residence permit.

An application for work permit is filed with the National Employment Bureau, and such application may be filed by employer on behalf of the foreign citizen who has obtained a permission for temporary residence in the Republic of Serbia together with a rationale for the necessity of employing the foreign citizen. The application for work permit is filed by the employer.



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The National Employment Bureau issues a work permit – a permission for employment to the foreign citizen who has a permission for temporary residence in the Republic of Serbia. The procedure for issuing such Permit takes up to 30 days.

A work permit is issued for a period covered by the temporary residence permit. Upon expiry of the temporary residence permit, an application is filed for an extension of the temporary residence permit, and a work permit is again applied for. The procedure remains the same.

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PROVISIONS OF GENERAL COLLECTIVE AGREEMENT WHEREBY COMPENSATIONS TO EMPLOYEES ARE INCREASED ARE STILL NOT BINDING ON EMPLOYERS

Annex II to General Collective Agreement was signed following lengthy negotiations, and the relevant Minister of Labour and Social Policy rendered another decision whereby the amended text of the General Collective Agreement applies to all employers in the Republic of Serbia (the Official Gazette of the Republic of Serbia No 8/09 dated 03 February 2009).

Annex II to General Collective Agreement stipulates that no provisions of the General Collective Agreement providing for an increase of employer's obligations in respect of compensation of expenses, increase of salary and other earnings shall be applied until further notice, until new amendments to the General Collective Agreement are signed.

Provisions of the General Collective Agreement binding on all employees pertain to:

- mandatory criteria for determining the length of annual leave,
- circumstances and length of paid leave,
- method of determining employee's salary,
- method of determining redundancy,
- procedure in case of termination of contract of employment when the employee does not perform and does not have the knowledge and abilities to perform the job.

As of 11 February 2009, employers are therefore obliged to apply only some provisions of the General Collective Agreement, but not such provisions whereby financial obligations toward the employees are increased.

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