

THE IS LAW

1. In the Information Society the importance of the legislation related to information and its usage rises. Of significant importance is the legislation on:

- ~~///~~ Information resources management;
- ~~///~~ ICT industry;
- ~~///~~ Telecommunications;
- ~~///~~ Electronic media;
- ~~///~~ International data transfer;
- ~~///~~ Access to information, confidential information, information immunity;
- ~~///~~ Data protection and information exchange security;
- ~~///~~ Computer crimes;
- ~~///~~ Intellectual property;
- ~~///~~ Librarian and archival science;
- ~~///~~ Management information systems, etc.

2. In the information society conditions the real mechanisms for realisation of the **CITIZENS' COMMUNICATIONS RIGHTS** are of significant importance:

- ~~///~~ Right on free expressing of opinions;
- ~~///~~ Right on information;
- ~~///~~ Right on personal immunity, including in the information sphere.

The legislation on access to information should envisage the mechanisms for real guaranteeing of the citizens' right on information provided in the Constitution. Having outlined the range of the secrets stipulated in the law, the principle "Everything which is not explicitly forbidden is allowed" should be applied consistently. In regulating the access to information it is important to settle the balance between **the citizens' right on information and the protection of their personal immunity** in the information area. The personal immunity and the protection of the personal information should be subject to branch legal organisation as well in areas like health care, insurance, employment, etc.

With the information technologies development the communications rights should receive mechanisms for their guaranteeing notwithstanding the information bearers and the type of channels for information exchange. Special attention should be paid to the legislative measures for protection of the citizens' communications rights in an electronic environment.

3. The TELECOMMUNICATIONS regulation (Telecommunications Act, 1998) is based on a new approach combining the following principles:

- ~~///~~ **Liberalisation** of the telecommunications services through restriction of the State monopoly, protecting the consumers: since January 1, 1998 the EU telecommunications market is fully liberalised and accessible to each subject wishing to take part in it; for Bulgaria the liberalisation is since January 1, 2002;
- ~~///~~ **Separation of the functions** of the State administration from these of the telecommunications market;
- ~~///~~ **Convergence**: cancellation of the borders between telecommunications, electronic media, information industries and publishing activity leads to independence of the contents of the information exchange from the transmission medium, respectively to gradual shifting of the responsibility for control on the contents from the State to the individual level;

~~///~~ **Globalisation** : the information society is evolving in a global environment where State borders and geographical distances gradually lose their current meaning as the necessity for international cooperation increases in the area of the information relationship and standardisation regulation in order to provide inter-connectivity and compatibility.

The principle of **minimalism** in the telecommunications organisation is adopted, which practically means to accept only an organisation absolutely obligatory for creation of an open competitive market in this area. The State retains its rights to manage the radio frequency spectrum in accordance with the Constitution.

4. The Bulgarian legislation should create conditions for successful development of Internet as a:

- ~~///~~ Medium for realisation of labour, deals and financial transfers where the participants have a guaranteed security and protected secrecy of the information exchange, as well as secure methods of identification of the parties in each transaction;
- ~~///~~ Medium for electronic documents exchange of trade contracts and legal acts in the public administration area, guaranteeing the integrity and wholeness of the documents, thus raising confidence in the electronic medium from the point of view of the authenticity and completeness of the information;
- ~~///~~ Medium for training, education and recreation; on the one hand, methods of teleeducation are developing, on the other hand, the techniques of self-control and parental control on the information contents in view to protect children and youth from demonstrations of pornography, racism, violence and information in conflict with the national laws and cultures.

In order to achieve this objective the legislation provides;

- ~~///~~ Lawful use of the global network in the interest of civil society development and realisation of the citizens' rights;
- ~~///~~ Prohibition of the censorship in the global network;
- ~~///~~ Precise and comprehensive defining of the restrictions related to the contents of the information in the network, for national security protection, public safety, interests of children and youth and on other grounds explicitly stated in a law;
- ~~///~~ Prohibition of limitation of the freedom of speech and the right on information through direct or indirect State or private control on the telecommunications infrastructure or on essential elements of Internet;
- ~~///~~ Prohibition of the discrimination in use of the global network on the basis of nationality, religion, sex, race, political belonging or other sign;
- ~~///~~ Allowance of possibility for use of cryptographic techniques without limitations;
- ~~///~~ Free import and export of communications technologies including cryptographic facilities;
- ~~///~~ Guaranteeing the security of the information exchange from the point of view of personal immunity;
- ~~///~~ Guaranteeing the intellectual property on the works in the global network.

On the account of the economic legal regulation, the development of programme products should be encouraged by the means of which the employer or the parents could specify the "dangerous" areas, according to their criteria, and to forbid their employees or children from access to them. In addition, the self-regulation of Internet service providers should be encouraged to avert the spreading of the illegal and harmful contents in the network.

The principle of minimalism should be carried in the legal organisation of Internet, but clear rules should be introduced about management of the Internet development on the territory of Bulgaria, including **the principles of obtaining and protection of IP on domain names**.

5. **THE ELECTRONIC MEDIA** in Bulgaria get legal regulation in a unified manner nonetheless the transmission medium of the radio and television programmes - via air, satellite, cable network or via the global network for transmission of voice, image and text. The main principles are:

- ~~///~~ Independence of electronic media;
- ~~///~~ Liberalisation of the radio and television activities;
- ~~///~~ Creation of conditions of loyal competition and pluralism of opinions;
- ~~///~~ Freedom of speech for people engaged in the electronic media;
- ~~///~~ Increasingly realisation of the right to information.

In order to achieve the above-mentioned objectives the following activities are encouraged by the legislation:

- ~~///~~ Development and affirmation of two types of radio and television operators - public and commercial with strict observation of the antimonopoly legislation of the country;
- ~~///~~ Freedom of reception and re-transmission of programmes;
- ~~///~~ Introduction of interactivity on our market in the area of electronic media;
- ~~///~~ Digitalisation and application of other advanced technologies for increasing the quality of the radio and television programmes and their reception;
- ~~///~~ Professional self-regulation in the electronic media area;

In the area considered **amendment and addition of the Copyright and Related Rights Act** is imminent with regard to the broadcasting of protected sites **in wireless way, to the transmission on cable or other technical facility**, in accordance with the Directive 93/83/EEC.

6. Gradually, but consistently and uniformly, the grounds of the legal organisation of **“INFORMATION SOCIETY SERVICES”** should be created as a single activity encompassing the existing and emerging new types of services provided remotely, by electronic means and on individual consumers' request. Such services are as follows:

- ~~///~~ Professional services provided in telecommunications way by lawyers, real estate brokers, insurance and trade companies;
- ~~///~~ Interactive forms of entertainment as video on demand, on-line computer games, etc.;
- ~~///~~ Electronic libraries, electronic periodicals;
- ~~///~~ Electronic commerce, financial transfers;
- ~~///~~ Electronic notary office;
- ~~///~~ Remote educational services, etc.

With respect to the “Information Society services” the principle of free circulation of goods and services should be applied respectively in order to include Bulgaria in the single liberalised European market.

7. An essential part of the “Information Society services” are the **ELECTRONIC COMMERCE AND THE ELECTRONIC BANKING**.

The services that Internet provides, including the “electronic market”. Encompass different actions of legal consequences (for example, offers, entering into contracts and unilateral legal deals, distribution of media products, etc.). It should be guaranteed that

the different subjects' interests are not threatened by the use of the new information technologies.

The **ELECTRONIC SIGNATURES** law is developed in accordance with the EU law through acceptance of a limited range of rules about the security of the information exchange and the responsibility of its participants. The regulation allows identifying the parties in a unique way, the integrity and the authenticity of the messages in the network. Essential issues subject to legal organisation are as follows:

- ~~///~~ Responsibility of the participants in the information exchange;
- ~~///~~ Equal importance of the electronic signatures as the so far established in the practice forms for identification of the parties;
- ~~///~~ Technologically neutral organisation of the electronic signatures notwithstanding the particular methods for their accomplishment;
- ~~///~~ Defying the third parties;
- ~~///~~ International cooperation for mutual recognition of the certification on bilateral or multilateral basis.

8. The **CONSUMERS' PROTECTION** should take into account the expected rapid development of the electronic commerce on Internet as well. That is why a legislation for consumers' protection should be created (Alleged wills, the conditions of withdrawals of tenders and public offers, etc.) Due to the fact that the communications media are across the borders, special attention should be paid to the international aspects of the problems. The acceptance of clear rules for consumers' protection in case of contractual obligations resulting from the electronic commerce is of significant importance.

9. THE SECURITY OF INFORMATION EXCHANGE IN THE GLOBAL NETWORKS is a first-grade issue for IS law.

In parallel with the technologies for effective protection of the secret of correspondence and the information immunity, the legal facilities for data protection should be developed. The cryptographic methods should be used freely and in the interest of protection of the personal immunity. As far as the cryptography is not a weapon, but technology, allowing the data to be presented in an illegible form for the wide public and therefore able to protect the secret of medical, finance and other information, the possibility for dropping out the restrictions about cryptographic software from the international agreements for control on the deals with weapon and/or goods of double use should be discussed.

The future Data Protection Law will create a necessary normative basis for guaranteeing the immunity of the person's private life, his rights and obligations in information plan through:

- ~~///~~ Specifying the public part of the information;
- ~~///~~ Regulation of the ways of gathering, management and usage of the personal information;
- ~~///~~ Control by the individuals on the authenticity of the information intended for them;
- ~~///~~ Protection of personal data, stored in automated systems for processing against accidental or unauthorised destruction, accidental loss, as well as against unauthorised access, alteration or distribution;
- ~~///~~ Establishment of a dedicated body for strict protection of the citizens' rights according to the Constitution and the international agreements from our part;
- ~~///~~ Free circulation of data in the environment of a developed Information Society through development of means for encoding information and protection of information bases;
- ~~///~~ Cross-border transmission of personal information;

✍ Not allowing gathering personal data related to race, political views, religious or other beliefs, as well as data concerning people's health and sexual life.

10. The **INTELLECTUAL PROPERTY law is another area where the technological development is of primary importance**. The progress in the technologies allowed the objects of the copyright to be reproduced digitally by comparatively non-complex technologies and to be distributed in a telecommunications way. Despite the trend to a "connected" world, in the area of rights on intellectual property in the European Union there is **still lack of single market space**. The harmonisation of the national legislations of the European countries in this field is on a relatively early stage. In execution of the European agreement for association of Bulgaria the following reasons should be taken into account:

- ✍ The rights on intellectual properties upon regulations, directives and other acts are recognised only to citizens of European Union countries who conditionally are referred as European Union citizens;
- ✍ The rights of Bulgarian citizens in EU are recognised only by the harmonised national legislation of the respective country. There is not reciprocity for the rights of these "European citizens" with the Bulgarian citizens;
- ✍ The bringing closer and harmonisation are mostly a preparation, but their real fruits are achievable only when Bulgaria gets a full-right membership.

As reflection of the technological innovations, the following issues should be decided upon:

- ✍ **Rights on names of domains** - essential for the right on intellectual property are the possibilities for using trade marks or other protected objects as names of domains, regime of declaration, registration (in front of private agency), recognition (global) and other problems whose legal organisation is missing or is to be updated;
- ✍ **Rights on software** - according to the European Union and the World Organisation on Intellectual Property (WOIP) the Bulgarian legislation for protection of software is in accordance with the Directive for legal protection of computer programmes 91/250/EEC and with the world trends. The more recent development of technologies in this area and their application in global networks raises in front of the Bulgarian legislator unsolved, in a global aspect as well, issues as the copyright protection of hyperlinks, hypertexts, etc.
- ✍ **Rights on data bases** - the copyright protection of the data bases is in accordance with the European and world trends. The legislation is in contradiction with the sui generis protection of data bases. This kind of protection differs a lot from the copyright protection since not the achievement is protected but the investment for making it notwithstanding the result.
- ✍ **Rights on the integrated circuits topology** - the current law on protection on **integrated circuits topology is in accordance** with the WTO rules (GATT/TRIPs) - the full choice of types of protection is offered: patent, copyright, as an useful model and industrial sample (design). In accordance with this act it is necessary through legislation changes to specify the rules for allowed free usage of this object.

11. In the **STANDARDISATION** area introduction of standards and specifications of the European Telecommunications Standardisation Institute is just starting in our country. The Telecommunications Act creates prerequisites for secondary legislation regulation of European kind, including for assessment of the correspondence and the notification of bodies and standards related to it in accordance with the European requirements. The work on preparation of a Standardisation Act should be accelerated.

12. **The Information Society is accompanied by SPECIFIC NEGATIVE EVENTS as well - computer crimes** and crimes in electronic medium. Computer crimes are the crimes with respect to networks and communications systems as:

- ~~///~~ Illegal access to information;
- ~~///~~ Damage of data;
- ~~///~~ Erasure of records for financial obligations;
- ~~///~~ Using services without payment;
- ~~///~~ Abuse with information systems, etc.

The telecommunications networks are favourable environment for conventional crimes as:

- ~~///~~ Pornography, violence, race discrimination;
- ~~///~~ Money laundry;
- ~~///~~ Organisation of dangerous for the public actions - assaults, explosives manufacturing, etc.

It is necessary to introduce effective punishments for such crimes which are to be applicable in across-border networks, as well. In view of the convergence of the information technology and telecommunications amendments in the CRIMINAL AND CRIMINAL PROCEDURE LAW should be introduced in order to bring it in accordance with the information technologies possibilities.

- ~~///~~ Problems will arise in tracing the performer of the crime (because of possible across-borders nature of the information exchange), in his identifying and in specifying the applicable law. In the field of the criminal law it will be necessary to revise the effectiveness and applicability of standard procedures as writ for inquest and search, confiscation of belongings and telephone eaves-dropping.
- ~~///~~ Procedures and technical methods for processing of electronic evidences should be developed in such a way that their compatibility among states is ensured. The provisions of the criminal law concerning evidences referring to traditional documents should be applied in a similar way to data stored in computer system.
- ~~///~~ Measures should be undertaken to bring to a minimum the negative consequences from the usage of cryptography in investigation of crimes without affecting its lawful usage.
- ~~///~~ It is necessary to create specialised units for investigation of crimes which need special knowledge in the information technologies. For this purpose it is necessary to lay down training programmes allowing the persons involved in criminal investigation to acquire the required expertise in that field.
- ~~///~~ It is necessary to have available fast and suitable procedures and systems for communications in conformance with which the investigation authorities could require from the foreign authorities to collect evidences immediately. In this respect it is necessary to update the existing contracts for legal assistance.

13. In order to stimulate the development of **HIGH TECHNOLOGIES** in the country and flow of foreign investment in the high tech productions and services in the following should be guaranteed legislatively:

- ~~///~~ Equal legal statute of local and foreign persons;
- ~~///~~ Favourable investment climate;
- ~~///~~ Preferential labour and insurance legal norms for high tech companies;
- ~~///~~ Legal framework stimulating the export;
- ~~///~~ Conclusion of bilateral agreements for avoiding the double taxation.

The transition towards Information Society presumes **the tax policy** to be used as a tool for encouragement of high tech productions and services.

Establishment of **high tech parks** as organisational form for accelerated development of the information industry should be settled in the legislation.

14. **THE GLOBAL CHALLENGES** in front of the law are connected to the circumstance that IS can be built on the basis of common rules for all participants in conditions of tolerance and respect towards national identity and cultural differences. In the "connected" world the existing differences among national legal systems should be avoided by means of international agreements and collaboration.

Bulgaria, following its European choice, supports the efforts for building a single system of rules in the EU for areas as telecommunications, protection of intellectual property, protection of data, electronic commerce, etc. Solutions of the IS global issues in the "connected" world should be sought in the process of integration of the Central and Eastern European countries to the EU, in the operation of the World Trade Organisation (WTO), the International Telecommunication Union (ITU), the Organisation for Economic Cooperation and Development (OECD), the World Intellectual Property Organisation (WIPO) and the World Bank, as well as by the way of bilateral agreements.

15. The legal problems of the information Society puts **NEW REQUIREMENTS IN FRONT OF THE EDUCATION AND THE QUALIFICATION OF LAWYERS.**

In the curricula of the higher schools there are no courses in Information law, Media law, Internet law. It is of urgent necessity to:

- ~~///~~ Enter changes in the curricula of the higher schools for the following specialities: law, journalism, public administration, etc., extending the possibility for acquaintance with the legal problems of the Information Society;
- ~~///~~ Have continuous education because of the dynamic nature of the subject, using widely the positive experience in other countries;
- ~~///~~ Strengthen the material basis of the juridical education with advanced facilities for processing juridical information.