

XXIIIRD INTERNATIONAL CONFERENCE OF DATA PROTECTION COMMISSIONERS

PARIS, 24th - 26th SEPTEMBER 2001

THE S.T.I.C. : THE HISTORY AND CONTENT OF A NEGOTIATED SET OF REGULATIONS

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The decree dated 5th July 2001 which created the Système de Traitement des Infractions Constatées (the S.T.I.C. - the System for Processing Established Infringements) is the culmination of several years of preparation and discussion. In the spirit of the plenary session of this conference and in order to answer the preoccupations of its organisers, this report will examine as a first step the conditions under which this decree was drawn up and secondly the principal points on which the discussions bore.

I

A NEGOTIATED SET OF REGULATIONS

Why may we talk of negotiations ? Because the regulatory act which authorises such a particular file consists in a “Decree in the Council of State”, which means a Decree taken after a specific procedure which requires an opinion by the Council of State. A consistent opinion of the Commission Nationale de l’Informatique et des Libertés (the C.N.I.L. - the National Commission on Computers and Liberties) was also required in the case. Several players were involved in this.

Who were the parties involved ?

1) Two Ministries.

- Firstly, the Ministry of Internal Affairs :

It was at the origins of the draft decree authorising this file. The competent department was the General Management of the National Police Force.

- Secondly, the Ministry of Justice :

Information arises from missions carried out by the judicial police. This police operates by virtue of the code of criminal procedure, under the authority of the Public Prosecutor Office. The S.T.I.C. is under the control of the Public Prosecutor.

2) An independent administrative authority.

The National Commission on Data Processing and Liberties (the C.N.I.L.). The Law dated 6th January 1978 requires its reasoned opinion on the regulatory act authorising such a file (Article 15). When it concerns the gathering and processing of data identified by name, known as “sensitive data”, its positive opinion is required (Article 31).

3) The Council of State.

In this case, the authorisation can only be granted by a “Decree in the Council of State”, taken on the positive and reasoned opinion of the C.N.I.L.

The legal framework was both national (the Law dated 6th January 1978), international (the Convention of the Council of Europe dated 28th January 1981) and European (the Directive dated 24th October 1995).

The government could have chosen the legislative route as it has done for other matters, for example the national fingerprint file of persons found guilty of sexual misdemeanours and the traces left by the unknown authors of such infringements (the Law dated 17th July 1998). But it has not done so.

These negotiations lasted for nearly 7 years, from 1994, the date on which the file was first submitted to the C.N.I.L. by the Ministry of Internal Affairs, to July 2001, the date of publication of the Decree authorising the S.T.I.C.

This period of time may appear to be long. It is not unusual for police files such as this one : 8 years were needed for the Decree dated 15th May 1996 authorising the national police and gendarmerie to process certain information identifiable by name, more than 7 years for the Decree dated 27th February 1990 and the same time for another decree issued on the same day governing the central file on terrorism.

There are two reasons for this length of time :

- Firstly, the nature of the procedure : it comprises the following stages :

. The submission by the Ministry of Internal Affairs to the C.N.I.L. of a highly detailed file, according to the procedure laid down in the Law of 6th January 1978.

. An examination of the file by the C.N.I.L., a collegiate body, and the issue by it of a positive opinion on conformity.

. The submission by the same Ministry to the Council of State of a draft decree authorising the file.

- Secondly, two sets of circumstances ; the Ministry of the Interior has applied three times to the C.N.I.L. The last submission resulted from the fact that the Council of State did not adopt the draft decree upon the first time it was submitted¹. As a result, the C.N.I.L. and the Council of State were applied to again and these two institutions deliberated once more on the matter.

A final observation : This case has been the subject of public comment in addition to the annual Report of the Council of State mentioned above, firstly in two annual reports from the C.N.I.L.², secondly in the press³, and finally in answers from the government to written questions from members of Parliament⁴.

The general context is that increasingly close attention is being paid by public opinion, in particular the press and various associations, to files containing data identified by name and especially where these concern sensitive data and files from the national police or gendarmerie. The signs of such attention and the reactions it

¹ Council of State, Public report 2000, La Documentation française, 2000, p. 67

² C.N.I.L., 19th activity report 1998, La Documentation française 1999, chapter 3 ; “ Computers, security ... and liberty ” fp. 63-75. This report contains the first deliberation dated 24th November 1998 relating to the opinion of the Commission (p. 68) ; 21st activity report 2000, La Documentation française, 2001, chapter 3 : “ The S.T.I.C. continued ” pf. 73-97. This report contains the second deliberation, dated 19th December 2000 (p. 29).

³ Cf. in particular Le Monde, 16th February 1999 and 7th July 2001.

⁴ Reply from the Minister of the Interior to the written question from Mr. Maman, J.O. A.N. n° 16047, 23rd August 2001 ; reply from the Prime Minister to the written question from Mr. Hage, J.O. A.N. n° 22894, 27th August 2001.

generates are numerous. A few years ago, two decrees relating to files of this nature were withdrawn by the government very shortly after their publication⁵. During the second examination of the draft decree relating to the S.T.I.C., the C.N.I.L. considered it necessary to obtain the opinion of a number of associations for the protection of human rights, lawyers and magistrates.

In its most recent public report in 2001, the C.N.I.L. mentions an increase of 21 % in the number of requests for access to and checking police files (S.I.S., Schengen, general intelligence, etc.)

II

THE DISCUSSIONS AND THE CONTENT OF THE DECREE DATED 5TH JULY 2001

The discussions as a whole were centred on the following points :

1. The content of the file.
2. The updating of the file.
3. The period of time for which the data may be retained.
4. The use of the file for the purposes of police administration.
5. The persons for whom the file data was intended.
6. The other rights of the people concerned.
7. The controls by the C.N.I.L.

The detailed character of the content of the decree on all these points is the direct result of these discussions.

1. The content of the file.

The discussions were centred on the following questions :

- a) What was the source of the information ? Judicial procedures, uniquely.
- b) Who are the persons concerned ?

- persons against whom serious and concurring elements exist which reveal their participation in the commitment of an offence. Simple suspects and, of course, witnesses are excluded ;

- victims. However, they can oppose the retention in the file of information identified by name which concerns them once the author of the facts has been definitively found guilty.

- c) The use of “ sensitive ” data identified by name, i.e. that which, “ directly or indirectly, reveals the racial origins or the political philosophical or religious opinions or membership of unions or the morals of persons ”. (Article 31, 1st paragraph, of the Law dated 6th January 1978).

⁵ The decree dated 27th February 1990 authorising the general intelligence services to gather, store and process information identified by name which showed the ethnic origin as part of a description, the political, philosophical or religious opinions or the membership of a union of adult persons for the exclusive accomplishment of their missions to search for and centralise intelligence of a political, social and economic nature which are necessary for government information, was withdrawn on 31st March 1990. The decree dated 9th November 1995 relating to regional files of the national gendarmerie authorising the retention and processing of information identified by name relating to adult persons in those stated cases and showing the particular objective and unchangeable physical characteristics as elements of description and which, either directly or indirectly revealed the opinions mentioned above was withdrawn on 16th December 1995.

It is only possible in two cases :

- if this information results from the nature or circumstances of the infringement ;
- if this information relates to particular, objective and permanent physical characteristics, as elements of the description of persons, if these elements are necessary for the search for and the identification of the authors of offences.

2. Updating the file.

This question was one of the most debated. According to the Law dated 6th January 1978, the body which holds a file identified by name is obliged to add to it or correct it, even as a matter of course, if he becomes aware of inaccuracies or of incompleteness in information identified by name which the file contains (Article 3)⁶. Article 37 gives the holder of the right of access the right to insist that information concerning him that is inaccurate, incomplete, equivocal, out of date or whose collection or use, communication or retention is forbidden, should be rectified, completed, clarified and updated. In 1999, the negative opinion of the Council of State was based in particular on the absence, in the proposed draft, of rules governing the transmission by the Courts to the controller of the file of final decisions on cases filed and disposed of, cases dismissed, release, acquittal and rehabilitation, and information on amnesty and rehabilitation as of right.

The system finally adopted is as follows :

The decree dated 5th July 2001 sets out, with regard to updating :

- the rights and obligations of the Public Prosecutor ;
- the obligations of the controller ;
- the rights of the people involved.

1) The Public Prosecutor.

The processing of the information involved is carried out under his control. Rights and obligations result from this.⁷

- rights : he may request the rectification or deletion of information identified by name or the addition of extra elements to certain information.

- obligations : he must transmit four types of information relating to legal decisions to release or dismiss a charge which become final, of cases dismissed or filed and disposed of for reason of the inadequacy of the charges brought against the person involved.

He also informs the controller of the file of the facts covered by an amnesty.

2) The authority managing the file.

The information that directly or indirectly identify persons involved by name must be deleted should a decision to release or dismiss a charge against them become final.

⁶ This obligation is frequently mentioned, both in the deliberations of the C.N.I.L. and in the decrees relating to files.

⁷ It is a case of the Public Prosecutor being territorially competent. Another system was conceivable. It was applied to other files : the automated fingerprint file created by the Decree dated 8th April 1987 is placed under the control of the Public Prosecutor to the Court of Appeal of Paris or of a magistrate appointed by him. The national automated file on genetic identification is placed under the control of a court magistrate, assisted by a committee of three members, experts in genetics and computers (Law dated 17th June 1998 and decree dated 18th May 2000) ; cf. the reply by the Minister of the Interior to the written question from Mr. Muselier, J.O. A. N., 13th August 2001, n° 60393.

The same information relating to persons who have benefited from the dismissal of the charges against them should be updated, unless the Public Prosecutor orders it to be deleted.

The same information relating to persons who have benefited from a case closed and disposed of for reasons of the inadequacy of the charges brought against them must be completed.

3) The persons involved :

They may demand that the enunciation of the facts finally retained by the legal authorities be substituted for that initially recorded in the file.

In cases of decisions relating to cases that are closed and disposed of, as mentioned above, of cases dismissed, release or final acquittal, on the occasion of the exercising of their right of access, they may request the Public Prosecutor either directly or through the C.N.I.L. to update the file.

3. The period of time for which the data may be retained.

The principle is simple : as soon as the data is no longer relevant with regard to the final object of the file, it is deleted. This is set out in several international conventions.

Its application to the S.T.I.C. leads us to formulate two comments. Firstly, the longer the period of retention, the more the means of updating the file are significant. Secondly, there is a wide gap between the legal enunciation of the facts and this period of time.

The discussions have led to a reduction in the periods of time initially envisaged for retention. These periods are indicated in Article 7 of the Decree dated 5th July 2001. For persons involved in a procedure, they are 5, 20 or 40 years for adults, depending on the nature of the infringement⁸, and 5, 10 or 20 years for minors. The period of time is 15 years for victims. Where the infringement concerns works of art, jewellery or weapons, it is extended until the objects have been found.

4. The use of the file for the purposes of police administration.

The examination of the draft decree by the C.N.I.L. and the Council of State has led to a considerable restriction of the possibility of such use. The C.N.I.L. expressed its opposition to the use of the file for administrative enquiries in its deliberations on 24th November 1998. In 1999, the Council of State emphasised the problems caused by the use of information contained in the S.T.I.C, originating from the reports written during a legal procedure and which were part of the evidence in the procedure, for administrative purposes.

The system selected may be summarised as follows :

- No use for the purposes of police administration is allowed as long as the procedure has not been closed legally.
- With regard to procedures that have been closed legally, use is possible as part of administrative police or security missions where the nature of these missions or the particular circumstances in which they have to take place include public order risks or risk to personal safety. Circumstances or events of an exceptional nature have been quoted in this connection.

Consultation is then limited to individually nominated members of staff of the national police force who have been specially appointed. Two levels of access form part of the appointment.

5. The persons for whom the file data was intended.

Discussions provided useful indications on this point.

⁸ With deletion at 75 years of age.

a) The recipients are firstly the staff of the national police force and the national gendarmerie who are carrying out missions on behalf of the criminal investigation department and who have been designated by their hierarchical authorities and secondly, the magistrates of the Court.

b) The S.T.I.C. should not be used as a parallel police record. Consequently, only the information recorded in the S.T.I.C. which relates to the procedure in progress may be attached to the procedure file.

6. The other rights of the people concerned.

The right of access is exercised indirectly : the request is sent to the C.N.I.L. who nominates one of its members to carry out the required investigations and make any modifications necessary. The person concerned is then informed that the notifications have been made.

Nominative information may be communicated to the person concerned if the following conditions apply :

. The C.N.I.L. notes, in agreement with the Minister of the Interior, that they do not undermine State security, defence or public safety.

. The procedure is closed legally.

. The Public Prosecutor agrees.

7. The controls by the C.N.I.L..

In addition to the general powers of control exercised by the Commission, the general management of the national police force reports to it each year on the activities of checking, updating and deletion of the information recorded.