UNITE-PROGRES-JUSTICE THIRD LEGISLATURE NATIONAL ASSEMBLY LAW N ° 010-2004 / AN DATA PROTECTION PERSONAL CHARACTER THE NATIONAL ASSEMBLY the Constitution ;

Fundamental principles

Definitions

Article 5.

resolution n $^{\circ}$ 001–2002 / AN of June 5, 2002, validating the mandate of deputies;

deliberated at its meeting of April 20, 2004 and adopted the law, the content of which is as follows: TITLE I: GENERAL PROVISIONS

The purpose of this law is to protect, in Burkina Faso, the rights of individuals with regard to the processing of personal data, whatever their nature, method of execution or those responsible, indertification of natural persons, in particular by reference to an identification number or to several specific to their physical, psychological, psychological, economic, cultural or social identity. icle 3: Processing of personal data is defined as any operation or set of operations carried out using automated or non-automated processes by a natural or legal person, and applied to personal data, such as collection, recording, retrieval, consultation or any other form of provision, reconciliation or interconnection, blocking, erasure or destruction.

icle 4: The controller is the natural or legal person to whom the person, public or private, who has the power to decide on the creation of these data. The data subject is the identifiable person to whom the personal data relates.

Any processing of personal data must have received the consent of the person (s) concerned, except for exceptions provided for by law. Article 6: Everyone has the right to know and to challenge the information and reasoning used in processing, automated or not, the results of which are opposed to him

interested processing of information of the processing of information of the profile or personality. No administrative or private decision involving an assessment of human behavior can have as its sole basis an automated processing of the personality. No administrative or private decision involving a definition of the profile or personality of the person concerned.

it is law applies to the automated or non-automated or called to appear in the files for which are only used for transit purposes.

The provisions of this law do not apply to temporary copies which are made within the framework of the service the best possible access to information

The automated processing of personal data for the purpose of research in the field of health is subject to the provisions of this law, with the exception of articles 5, 13, 18, 20 The examination of the request for the implementation of these treatments by the Supervisory Authority provided for in Title III below, is subject to the favorable opinion of the Ethics Committee for health research.

The processing of personal data carried out on behalf of persons other than those subject to the provisions of Article 18 above must, prior to their implementation, be declared to the Authority. control.

the same applies to be carried out from the data thus collected if these studies are carried out. by the personnel ensuring this follow—up and intended for their exclusive use TITLE II: IMPLEMENTATION OF DATA PROCESSING A

Chapter 1: General conditions Article 12 The person responsible for processing personal data has the obligation to collect and process data fairly, lawfully and not fraudulently.

The person in charge of the processing of personal data has the obligation to inform the data subject of the processing, the recipients of the processing of personal data has the obligation to infringement.

The processing of personal data can only be done under the following conditions: data must be collected for specific, explicit and legitimate purposes. Consequently, the data cannot be used for purposes other than those for which they are collected; the data must be adequate, relevant and not excessive in relation to the purposes for which they are collected and for which they are subsequently processed;

the data must be kept for a period which does not exceed the period necessary for the purposes for which they are collected or processing for historical, statistical or research purposes. The controller must implement all appropriate technical and organizational measures to preserve data security, in particular protect data against accidental loss, alteration, dissemination or unauthorized access. authorized.

Article 16: If information has been transmitted by mistake to a third party, its rectification or be notified to this third party, unless dispensed with by the Supervisory Authority.

Data subjects have the right to object, for legitimate reasons, to the processing of personal data concerning them. This right does not apply to processing designated by regulatory act, provided for in Article 18 below. ight to know the right to know the stored data concerning them. They must be able to exercise this information of a medical nature, this information of a medical nature, this information can only be communicated to the interested party through a doctor. that he designates for this purpose. If data is found to be incomplete or inaccurate, the data subjects may request its correction or rectification or rectification or rectification and deliver, free of charge, a copy of the amended registration.

the regard to processing relating to State security, defense and public security, the request is addressed to the Supervisory Authority. The registrant is notified that the verifications and any modifications have been carried out. Apart from the case where they must be authorized, by law, the automated processing of personal data operated on behalf of the State, an establishment

a local authority or a legal person governed by private law managing a public service, are decreed by decree after reasoned assent from the Supervisory Authority, an appeal may be brought before the Council of State. Article 19:

partice 18 above Provisions specific to certain

data categories

Article 20: Unless otherwise provided by law, it is prohibited to collect or process, without the express consent of the data subject, personal data relating to the health of the latter or which reveal racial, ethnic origins, political, philosophical or religious opinions, union membership or death.

Article 21: Personal data may be processed without the consent of the data subject, in the following cases:

 the processing is necessary for compliance with a legal obligation to which the controller is subject to; the processing is necessary to protect the life of the data subject or that of a third party; the processing relates to data made public by the data subject;

However, in exceptional circumstances, the transmission may be authorized by decree after obtaining the assent of the Supervisory Authority.

the processing is necessary, either for the performance of a contract to which the data subject is a party, or for pre-contractual measures taken at the latter's request; the processing is necessary for the establishment of an infringement, a right, the exercise or defense of a legal right; the treatments necessary for the purposes of preventive medicine, medical diagnosis, administration of care or treatment of health profession or by another person to whom profession of his or her duties.

 jurisdictions and public authorities acting within the framework of their legal powers; legal persons managing a public service, after obtaining the assent of the Supervisory Authority,

auxiliaries of justice, for the strict needs of the exercise of the missions entrusted to them.

Article 22. The following may process personal data relating to offenses, convictions and security measures only:

Article 23: Any disclosure or commercial use of personal health data is prohibited. Article 24: The transmission between Burkinabe territory and abroad, in any form whatsoever, of personal data subject to automated processing governed by Article 19 above, can only be carried out if the transmission takes place in accordance with the protection afforded by this law,

The provisions of Articles 20, 22 and 24 do not apply to personal data processed by the written or audiovisual media within the framework of the laws which govern them, if their application would have the effect of limiting the exercise of the freedom of expression.

Creation, composition and organization informatics and by controlling the applications of this end, the commission is created. It is responsible for ensuring compliance with the processing of personal data. To this end, the commission is created by decree, and by controlling the applications of their rights and obligations of their rights and by controlling the applications of their rights and obligations and by controlling the processing of personal data. To this end, the commission is created. It is responsible for ensuring compliance with the processing of personal data. To this end, the commission is created. It is responsible for ensuring complications of information technology to the processing of personal data. To this end, the commission is created. It is responsible for ensuring compliance with the processing of their rights and obligations of their rights and obligations of their rights and obligations of their rights and the processing of personal data. To this end, the commission is created. It is responsible for ensuring compliance with the processing of personal data. To this end, the commission is created. It is responsible for ensuring compliance with the processing of personal data. To this end, the commission is created. It is responsible for ensuring compliance with the processing of personal data. To this end, the commission is created. It is responsible for ensuring compliance with the processing of personal data. To this end, the commission is created. It is responsible for ensuring complications and the commission is created. It is responsible for ensuring complications and the commission is created. It is responsible for ensuring complications and the commission is created. It is responsible for ensuring complications and the commission of the c Article 27: The Data Protection Commission is an independent administrative authority.

It is composed of nine (09) members as follows: — a magistrate, member of the Council of State, elected by his peers in general assembly; a magistrate, member of the Court of Cassation, elected by his peers in a general associations of IT professionals; a personalities appointed by the President of Faso because of his competence.

The members of the Data Protection Commission are appointed by decree in the Council of Ministers. Article 28 The mandate of the members of the Commission is of five (05) years renewable one TOIS. With the exception of the president, the members of the Commission do not exercise a function on a permanent basis.

Members of the Commission are irremovable during their term of office. Membership can only be terminated in the event of resignation, incapacity noted by the Commission under the conditions it defines or serious misconduct. The members of the Commission are subject to professional secrecy in accordance with the texts in force.

members or its agents, assisted if necessary by experts, to carry out, with regard to any data processing, on-site verifications and to obtain all

The President of Faso appoints the President of the Commission from among the members of the Commission. The President is assisted by a vice president is assisted by a vice president is assisted by a vice president as member of the Commission.

Article 30 Membership of the Commission is incompatible: with the quality of member of the Government, with the functions of company directors contributing to the manufacture of equipment used in IT or telecommunications, to the provision of IT or telecommunications services; with the holding of a stake in the above-mentioned companies.

Article 31: If during the term of office, the president or a member of the Commission ceases to exercise his functions, he is replaced in accordance with the forms and quotas defined in articles 27 and 29. The mandate of the successor thus designated is limited to the remaining period Article 32: The members of the Commission, before taking office, take before the Court of Appeal of Ouagadougou sitting in solemn hearing, the oath of which the content follows: "I solemnly swear well and faithfully fulfill my function of member of the Data Protection Commission, with complete independence and impartiality, in a dignified and loyal manner and to keep the deliberations secret "I solemnly swear well and faithfully fulfill my function of member of the content follows: "I solemnly swear well and loyal manner and to keep the deliberations secret "I solemnly swear well and faithfully fulfill my function of member of the Data Protection Commission, with complete independence and impartiality, in a dignified and loyal manner and to keep the deliberations secret "I solemnly swear well and faithfully fulfill my function of member of the Data Protection Commission, with complete independence and impartiality, in a dignified and loyal manner and to keep the deliberations secret "I solemnly swear well and faithfully fulfill my function of member of the content follows: "I solemnly swear well and loyal manner and to keep the deliberations secret "I solemnly swear well and loyal manner and to keep the deliberations are content follows: "I solemnly swear well and loyal manner and to keep the deliberations are content follows: "I solemnly swear well and loyal manner and to keep the content follows: "I solemnly swear well and loyal manner and to keep the deliberations are content follows: "I solemnly swear well and loyal manner and to keep the content follows: "I solemnly swear well and loyal manner and to keep the content follows: "I solemnly swear well and loyal manner and to keep the content follows: "I solemnly swear well and loyal manner and to keep the content follows: "I solemnly swear well and loyal manner and loyal mann

Articles 33: The members of the Commission enjoy total immunity for opinions expressed in the exercise or on the occasion of the exercise of their functions. In the exercise of their attributions, the members of the Commission do not receive instructions from any authority. Computer scientists called upon either to give information to the Commission or to testify before it are released as necessary from their professional obligation of discretion. Article 34:

The members of the Commission receive allowances fixed by decree in the Council of Ministers. Article 35 The appropriations necessary for the Commission for the accomplishment of its mission are financed by the State budget or by any other resource which may be allocated to it. The Commission can only receive funding from an individual, an organization or a foreign state through the cooperation structures of Burkina Faso. However, the fulfillment of certain formalities provided for in articles 17, 18, 19 and 41 of this law may give rise to the collection of fees, Article 36: The Commission enjoys management autonomy. The President of the Commission is the budget authorizing officer. It applies the management rules of public accounting. The control of the financial accounts of the Commission is the responsibility of the Court of Auditors.

Responsibilities of the IT Commission

and freedoms Article 37: For the exercise of its mission, the Commission:

a- takes individual or regulatory decisions in cases provided for by this law; b- may, by special decision, appoint one or more of its

information and documents useful for its mission; C- issue, where appropriate, model rules in order to ensure the system security; in exceptional circumstances, it may prescribe security measures consisting in particular of the destruction of media information or by suspending the authorization: d- sends the interested parties warnings and denounces the

prosecution of offenses of which it is aware; e- Ensure that the modalities of implementation of the right of access

and rectification indicated in the acts and declarations provided for in Articles 18 and 19 do not hinder the free exercise of this law; f- receives complaints, petitions and plants, g- keeps abreast of industrial activities, services that contribute to the implementation of IT.

h- keeps abreast of the effects of the use of IT on the right to the protection of private life, the exercise of freedoms and the functioning of democratic institutions,

1- advises people and organizations who use the automated processing of personal information or which carry out tests or experiments likely to lead to such treatments; I respond to requests for advice from public authorities and, if

where appropriate, jurisdictions; k- proposes to the Government all legislative measures or regulations likely to adapt the protection of freedoms to the evolution of IT processes and techniques. Article 38

Ministers, public authorities, managers of public or private companies, heads of various groups and more generally holders or users of name files must take all necessary measures to facilitate the task of the Commission. They cannot oppose its action for any reason whatsoever Article 39 The Commission may instruct the President or the Vice-President to exercise his or her powers with regard to the application of Articles 19 and 37 (d, e and f)

The Data Protection Commission ensures that the processing, whether automatic or not, public or private, of nominative information is carried out in accordance with the provisions of the law. It can take all necessary measures for this purpose. Article 41

For the most common categories of data processing of a public or private nature which clearly do not involve an infringement of privacy or freedoms, the Commission establishes simplified standards inspired by the characteristics mentioned in Article 42 above. below. for data processing that meets these standards, only a simplified declaration of conformity with one of these standards is filed with the Commission

specific to this, the declaration receipt is issued without delay. Upon receipt of this receipt, the applicant can start the data processing. He is not exempt from any of his responsibilities. Article 42: The request for an opinion or the declaration must specify: a— the person who presents the request and the one who has the power to decide the

creation of the data processing or, if it resides abroad, its representative in Burkina Faso; b- the characteristics, purpose and, if applicable, the name of the processing of data; C- the service or services responsible for implementing it, the service to which the right of access is exercised as well as the measures

taken to facilitate the exercise of this right; e- the categories of persons who, by reason of their functions or for service needs, have direct access to recorded information; fr the personal information processed, their origin and the duration of their retention as well as their recipients or categories of recipients authorized to receive communication of this information;

g- reconciliations, interconnections or any other form of relation of this information as well as its transfer to third parties; h— the measures taken to ensure the security of data processing

and information and the guarantee of secrets protected by law; — If the data processing is intended for the sending of information tives between Burkinabé territory and abroad in any form whatsoever, including when it is the subject of operations partially carried out on Burkinabé territory from operations previously carried out outside Burkina Faso Article 43 The regulatory act provided for the processing of data governed by article 18 C1 above specifies in particular.

 the name and purpose of the data processing,
the service to which the right of access is exercised, the categories of personal information recorded as well as the recipients or categories of recipients authorized to receive communication of this information Decrees may provide that regulatory acts relating to certain data processing relating to State security, defense and public security will not be published.

Article 44: The Commission shall make the list of data processing operations available to the public, which specifies for each of them: the law or regulatory act deciding its creation or the date of its declaration; - its name and purpose; the service to which the right of access is exercised,

the categories of personal information recorded as well as the recipients or categories of recipients authorized to receive communication of this information. The decisions, opinions or recommendations of the Commission whose knowledge is useful for the application of this law are made available to the public, under the conditions fixed by decree.

The Commission presents each year to the President of Faso, to the President of the National Assembly and to the President of the Constitutional Council, a report giving an account of the execution of its mission. This report is made public. TITLE IV: CRIMINAL SANCTIONS

igraps and a fine of five hundred thousand (500,000) to two 177illion (2,000,000) CFA francs. itrom being distorted, damaged or communicated to unauthorized third parties is punt de imprisonment for three (03) months to five (05) years and a fine of five hundred thousand (500,000) to two million (2,000,000) CFA francs

Article 48 The fact of communicating to unauthorized third parties or of unauthorized or unlawful access to personal data is punishable by a prison sentence of three (03) months to five (05) years and one million (1,000,000) to three million (3,000,000) CFA francs in fines.

Article 49: Is punished with an imprisonment of three (03) months to five (05) years and from five hundred thousand (500,000) to two million (2,000,000) CFA francs fine, the diversion of purpose of '' collection or processing of personal data. in the event of processing data by fraudulent, unfair or unlawful means, or of processing personal information (5,000,000) to five (05) years of imprisonment and from two million (5,000,000) to five million (5,000,000) CFA francs fine. In the event of automated processing data: or unlawful means, or of processing data: of processing data: of processing data for the purpose of research in the field of health, the same penalties apply to the fact of processing data: or unlawful means, or of processing data: or unlawful means, or of processing data: or unlawful means, or of processing data by fraudulent, unfair or unlawful means, or of processing data by fraudulent, unfair or unlawful means, or of processing data: or unlawful means, or of processing data by fraudulent, unfair or unlawful means, or of processing data: or unlawful means, or of processing data by fraudulent, unfair or unlawful means, or of processing data by fraudulent, unfair or unlawful means, or of processing data: or unlawful means, or of processing data by fraudulent, unfair or unlawful means, or of processing data: or unlawful means, or of processing data by fraudulent, unfair or unlawful means, or of processing data: or unlawful means, or of processing data by fraudulent, unfair or unlawful means, or of processing data by fraudulent, unfair or unlawful means, or of processing data by fraudulent, unfair or unlawful means, or of processing data by fraudulent, unfair or unlawful means, or of processing data by fraudulent, unfair or unlawful means, or of processing data by fraudulent, unfair or unlawful means, and the processing data by fraudulent, unfair or unlawful means, and the processing data by fraudulent, unfair or unlawful means, and the processing data by fraudulent, unfair or unlawful means, and the processing data by fraudulent, unfair or unlawful means, and the processing data by fraudulent, and the processing data by fraudulent, unfair or unlawful means, and the processing data by fraudulent, and the processing data by fraudulent, and t 1. without having previously informed individuals individually

concerned about their right of access, rectification and opposition, the nature of the person, or, in the case of a deceased person, despite the expressed refusal by it during his lifetime. the cases provided for by law, of placing or keeping in computerized memory personal information concerning of fenses, convictions or manners of people is punished by three (03) months to five hundred thousand (500,000) to two million (2,000,000) of CFA francs fine. The same penalties shall apply to the cases provided for by law, of placing or keeping in computer memory personal information concerning of fenses, convictions or security measures. In the cases provided for by law, of placing or keeping in computer memory personal information concerning of fenses, convictions or security measures. In the cases provided for by law, of placing or keeping in computer in the cases provided for by law, of placing or keeping in computer memory personal information concerning of the cases provided for by law, of placing or keeping in computer memory personal information concerning of the cases provided for by law, of placing or keeping in computer in the cases provided for by law, of placing or keeping in computer in the cases provided for by law, of placing or keeping in computer memory personal information (2,000,000) of CFA france fine. The cases provided for by law, of placing or keeping in computer in the cases provided for by law, of placing or keeping in the cases provided for by law, of placing or keeping in computer in the cases provided for by law, of placing or keeping in the cases provided for by law, of placing or keeping in the cases provided for by law, of placing or keeping in the cases provided for by law, of placing or keeping in the cases provided for by law, of placing or keeping in the cases provided for by law, of placing or keeping in the cases provided for by law, of placing or keeping Article 52: The fact, without the agreement of the Data Protection Commission, of keeping information in nominative form beyond the period provided for in the declaration of the computerized processing is punished by three (03) months to five (05) years of imprisonment and from five hundred thousand (500,000) to two million (2,000,000) CFA francs fine.

1 montes information the interested party, this information the disclosure of which would have the effect of undermining the honor and consideration of the interested party or the privacy of his private life, to bring, without the authorization of the interested party who does not have the capacity to receive it, is punished by three (03) months to five (05) years of imprisonment and a fine of one million (1,000,000 to three million (3,000,000) CFA francs. ation provided for in the preceding paragraph is punished by three (03) months to cina (05) years of imprisonment and from five hundred thousand (500,000) to two million (2,000,000) CFA francs fine when was committed through recklessness or negligence. In the cases provided for in the two preceding paragraphs, the prosecution can only be exercised on the complaint of the victim, his legal representative or his dependents.

Article 54 Shall be punished by imprisonment of one (01) month to one (01) year and two hundred thousand (200,000) to one million (1,000,000) CFA francs fine, the fact of hindering the action by the Commission: either by opposing the on-the-spot checks,

either by refusing to communicate to its members or its agents, information and documents useful for the mission entrusted to them or by concealing or removing said documents, either by communicating information which does not conform to the content of the recordings at the time the request was made or which does not present it in a directly intelligible form

The provisions of Articles 46 to 54 are applicable to non-automated or mechanographic files the use of which does not fall exclusively within the exercise of the right to

TITLE V: MISCELLANEOUS PROVISIONS Article 56. Notwithstanding the rules relating to professional secrecy, members of the health professions may transmit the personal data they hold within the framework of automated data processing authorized by the Commission.

 the commission. However, the authorization for the exemption and technical justification for the data transmitted cannot be kept in a nominative form beyond the period necessary for the authorization for the exemption and, except with a reasoned authorization from the commission from the commission from the exemption and, except with a reasoned authorization from the data transmitted cannot be kept in a nominative form beyond the period necessary for the authorization from the commission from the commission from the commission from the commission from the exemption and, except with a reasoned authorization from the commission from the comm The presentation of the results of the data processing must in no case allow the direct identification of the persons concerned. The data are received by the research manager appointed for this purpose by the natural or legal person authorized to carry out their processing. This manager ensures the security of the information and its processing, as well as respect for the purpose of the data. -this The persons called upon to carry out the data processing as well as those who have access to the data to which it relates are bound by professional secrecy.

Article 57: Les dispositions des articles 12, 13, 15, 18, 19, 22 et 25 relatives à la collecte, a l'enregistrement et à la conservation des donnees a caractere personnel sont applicables aux fichiers non automatises ou mécanographiques autres que ceux dont l'usage relève du strict exercice du droit à la vie privee Article 58: Les dispositions de la présente los ne font pas obstacle à celles de la loi 770 040/96/ADP du 08 novembre 1996, portant obligation de reponse et de secret statistique.

itials 59 : A titre transitoire, les traitements de données régis par l'article 18 ci-dessus et déjà créés, ne sont soumis qu'à une déclaration auprès de la Commission des dispositions de l'article 42. La Commission des dispositions de l'article 18 et fixer le délai au terme duquel l'acte réglementant le traitement de données doit être pris. Article 60 A compter de la promulgation de la présente loi, tous les traitements de données devront répondre aux prescriptions de cette loi, dans les délais ci-après trois (03) ans pour les traitements de données régis par l'article 18,

Article 61 : Des décrets pris en conseil des ministres détermineront les modalités d'application de la présente loi, Article 62: La présente loi qui abroge toutes dispositions antérieures contraires sera exécutée comme loi de l'Etat. Ainsi fait et délibéré en séance publique à Ouagadougou, le 20 avril 2004

Pour le Président de l'Assemblée nationale, Le Deuxième Vice-President

--- 3 S inil Dimfangodo Salifou SAWADOGO

Le Secrétaire de séance

Mamadou Christophe QUATTARA

TITRE VI: DISPOSITIONS TRANSITOIRES ET FINALES

• six (06) mois pour les traitements de données régis par l'article 19.