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Data protection: Redress mechanisms and their use

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Mechanisms of legal redress in the field of personal data protection

Personal data protection in the Czech Republic is regulated principally by Act No. 101/2000 Coll., on Personal Data Protection, which sets rules for personal data processing and defines the sphere of activities and powers of the Office for Personal Data Protection (Czech DPA). Personal data protection – namely privacy protection – is also regulated by §§ 11-16 of the Civil Code (Act No. 40/1964 Coll.). Misuse of personal data can, in the most severe cases, also be sanctioned under the Criminal Code (Act No. 40/2009 Coll.).

The Act on Personal Data Protection provides persons requesting their data basically two possibilities to seek remedy regarding issues of personal data processing. Pursuant to § 21, Section 1, of the Act on Personal Data Protection, such persons may, if they believe that the controller or processor processes their personal data and that this contradicts the protection of private and personal life of the data subject or the law, request from the controller or processor an explanation and change of the resulting state. This may be the case especially regarding blocking, correction, supplementing or erasure of personal data.

Regardless of whether the data subjects have used the above mentioned redress mechanism or not, they may contact the Office for Personal Data Protection and file a complaint there. Pursuant to Act on Personal Data Protection, § 29, Section 1, the Office for Personal Data Protection accepts suggestions and complaints regarding breach of obligations defined by the law and informs about the results of investigations. The Office conducts inspections in order to check whether there is compliance with the rules defined by the Act on Personal Data Protection. Following the conclusions of the inspection, it may impose corrective actions pursuant to § 40 of the Act on Personal Data Protection needed to correct the detected lacks. The Office also deals with infractions and administrative offences and imposes fines pursuant to the Act on Personal Data Protection. Fines may amount up to CZK 5 000 000, - in case of breaches of regulations and CZK 10 000 000, - for administrative offences, depending from the gravity of the offence.

According to statistics of the Office for Personal Data Protection, there were 879 complaints received in 2009, 1039 complaints in 2010 and 1119 complaints in 2011.¹ An investigation

¹ Czech Republic, The Office for Personal Data Protection (*Úřad pro ochranu osobních údajů*) (2011), *Výroční zpráva Úřadu pro ochranu osobních údajů pro rok 2009 (Annual report of the Office for Personal Data Protection for 2009)*, Brno, Masarykova univerzita v Brně, 2010, p.8.

was initiated in 143 cases in 2009, 106 cases in 2010 and 179 cases in 2011. Average duration of investigations was 150 days in 2009, 105 days in 2010 and 132 days in 2011.

In 2009 the total of 53 cases initiated one-level (in 20 cases multi-level) administrative proceedings against legal persons related to the issue of personal data protection. In 2010 it was 86 (27) cases and in 2011 and the number was 90 (20) cases. Average duration of this kind of proceeding was 54 days (153 days for multi-level proceeding) in 2009, 86 (206) in 2010 and 90 (167) in 2011. In 12 cases one-level (in 4 cases multi-level) administrative proceedings against natural persons (individuals) was initiated in 2009, 42 (1) in 2010 and 14 (8) in 2011. Average duration of one-level proceeding was 56 days (181 for multilevel proceeding) in 2009, 67 (106) days in 2010 and 70 (182) in 2011. Fines were imposed in 67 cases in 2009, 111 in 2010 and 102 in 2011. Corrective actions were ordered in 195 cases in 2009, 161 in 2010 and 201 in 2011.²

Especially in cases where the complainants do not agree with the outcome provided by the Office for Personal Data protection, they can refer to the Public Defender of Rights (Ombudsman), whose office also deals with this issue to a limited extend. It should be noted that the Office of the Public Defender does not act as an appeal institution to the Office for Personal Data Protection (UOOU) and therefore can't substitute any UOOU activities such as revoke, repeal or make decisions. Ombudsman is entitled only to ask UOOU to rectify a mistake. 22 investigations related to the issue of personal data protection took place in 2009, 23 in 2010 and 21 in 2011.³

Another option for the data subject to seek remedy is to take the issue of right to privacy to civil court. This option falls exclusively under the civil law – as opposed to filing a complaint and subsequent inspection by the Office for Personal Data Protection, which is a redress mechanism under public law where the complaints do not play an active role and cannot

Czech Republic, The Office for Personal Data Protection (*Úřad pro ochranu osobních údajů*) (2011), *Výroční zpráva Úřadu pro ochranu osobních údajů pro rok 2010 (Annual report of the Office for Personal Data Protection for 2010)*, Brno, Masarykova univerzita v Brně, 2011, p.8

Czech Republic, The Office for Personal Data Protection (*Úřad pro ochranu osobních údajů*) (2011), *Výroční zpráva Úřadu pro ochranu osobních údajů pro rok 2011 (Annual report of the Office for Personal Data Protection for 2011)*, Brno, Masarykova univerzita v Brně, 2012, p.7.

² Czech Republic, Answer provided by the Office for Personal Data Protection responding to information request, 20.8.2012.

³ Czech Republic, Answer provided by the Office of the Public Defender of Rights responding to information request, 3.5.2012.

actively influence further actions. They only have a right for information regarding further actions taken related to their complaints.

Legal action regarding privacy protection may relate to a wide range of breaches of personal rights, including the breach of the right to privacy. The right to privacy is broader and covers inter alia also the right to personal data protection. Pursuant to § 13 of the Civil Code, an individual may, in particular, demand someone to stop unauthorized breaches of the right to privacy, to eliminate the consequences of such breaches and to require appropriate compensation.

In the Czech Republic, there are no centralised statistics related to data protection issues in court decision. The statistics do not distinguish cases involving the protection of personal data within the wide issue of protection of personality in civil justice.⁴ 551 proceedings took place in 2009⁵ and 568⁶ in 2010. The costs of proceedings are derived mainly from the success of the procedure and its complexity. In case of the issue of protection of personality, an average duration of proceedings was 806 days in 2009⁷, 768 days in 2010⁸ Data for 2011 are not available yet. It is not possible to analyse the outcomes of this mechanism without a detailed review of individual court files.

The problem with the existing legal provisions regulating protection of privacy is that it is only very general and practical application of the provisions thus depends from the judicature.⁹

⁴ Czech Republic, Answer provided by the Ministry of Justice responding to information request, 24.4.2012.

⁵ Number of cases concerning the protection of personality (not only personal data protection cases); Czech Republic, The Ministry of Justice (*Ministerstvo spravedlnosti*) (2010), *Statistický přehled soudních agend, druhá část, rok 2009 (Statistical overview of litigation, the second part, year 2009)*, p. 11, available at: <http://cslav.justice.cz/InfoData/statisticke-rocenky.html;jsessionid=ac93c4e9e73de0b9743e84f37504>.

⁶ Number of cases concerning the protection of personality (not only personal data protection cases); Czech Republic, The Ministry of Justice (*Ministerstvo spravedlnosti*) (2011), *Statistický přehled soudních agend, druhá část, rok 2010 (Statistical overview of litigation, the second part, year 2010)*, p. 11, available at: <http://cslav.justice.cz/InfoData/statisticke-rocenky.html;jsessionid=ac93c4e9e73de0b9743e84f37504>.

⁷ Czech Republic, The Ministry of Justice (*Ministerstvo spravedlnosti*) (2010), *Statistický přehled soudních agend, druhá část, rok 2009 (Statistical overview of litigation, the second part, year 2009)*, p. 23.

⁸ Czech Republic, The Ministry of Justice (*Ministerstvo spravedlnosti*) (2011), *Statistický přehled soudních agend, druhá část, rok 2010 (Statistical overview of litigation, the second part, year 2010)*, p.23.

⁹ Of great significance for the protection of private life is undoubtedly the ECHR case *Niemitz v. Germany* of 4.5.1990, No. 13710/88. Personality rights protection is in particular subject of several cases, e.g. Supreme Court of the Czech Republic case of 26.4.2012 on improper use of portraits and pictorial images, No. 30 Cdo 1677/2011; Supreme Court case of 20.6.2011 on using personal credentials and portraits in advertisements for the printed

More detailed provisions can be found in the new Civil Code (Act No. 89/2012 Coll.) which should become effective starting January 1, 2014. Privacy protection and hence also personal data protection is governed by Section 6, Subsection 2, under "Appearance and privacy."

In specific cases, breaches of the right to privacy can also be dealt with in criminal proceedings. These include especially the cases of illegal use of personal data by employees of state and local administration and persons having an obligation to keep a confidentiality. Cases of unauthorized disclosure, communication or access to personal data that cause serious breach to the rights and legitimate interests of persons, often fall under § 180 of the Criminal Code defining the offence of "unauthorized use of personal data". This is the case for data collected in the course of public administration or for persons who illegally disclose the data despite their obligation to keep it confidential imposed or acknowledged by the Government.

Other offences, also usually related to unauthorized handling of personal information, include criminal offence of secrecy breach of transported messages pursuant to § 182 (§ 239 and § 240 of the previous Criminal Code effective until 2010) and a breach of secrecy of privately held documents pursuant to § 183 of the Criminal Code.

Based on court statistics, 14 criminal proceedings took place in 2009¹⁰ and 25 criminal proceedings in 2010.¹¹ Average duration of the proceeding was 321 days (§ 239 of the old Criminal Code)¹² in 2009 and 105 days (§ 239 of the old Criminal Code), 449 days (§ 240 of

press, No. 28 Cdo 4755/2009; and Supreme Court case of 27.1.2011 on teachers' personality and privacy protection rights, No. 30 Cdo 2563/2009.

10 Number of cases concerning § 239 and § 240 of the Penal Code (No. 140/1961 Coll.); Czech Republic, The Ministry of Justice (*Ministerstvo spravedlnosti*) (2010), *Statistický přehled kriminality, rok 2009 (Statistical overview of criminality, year 2009)*, p. 293-294, available at: <http://cslav.justice.cz/InfoData/statisticke-rocenky.html;jsessionid=ac93c4e9e73de0b9743e84f37504>.

11 Number of cases concerning § 239 and § 240 of the Penal Code (No. 140/1961 Coll.) and § 180, § 182 and § 183 of the New Penal Code (No. 40/2009 Coll.); Czech Republic, The Ministry of Justice (*Ministerstvo spravedlnosti*) (2011), *Statistický přehled kriminality, rok 2010 (Statistical overview of criminality, year 2010)*, p. 294, 497-503, available at: <http://cslav.justice.cz/InfoData/statisticke-rocenky.html;jsessionid=ac93c4e9e73de0b9743e84f37504>.

¹² Czech Republic, The Ministry of Justice (*Ministerstvo spravedlnosti*) (2010), *Statistický přehled soudních agend, druhá část, rok 2009 (Statistical overview of litigation, the second part, year 2009)*, p. 106.

the old Criminal Code), 53 days (§ 180 of the new Criminal Code), 48 days (§ 183 of the new Criminal Code in 2010.¹³

Other offences can be related to the issue of personal data protection as well, such as blackmailing under § 175, breach of another person's rights under § 181, libel or slander under § 184, misuse of public authority under § 329, false accusation under § 345, false testimony and false expert opinion under § 346, dangerous persecution under § 354 and other.

Based on centralized statistics of criminal justice, it is not possible to say, which cases are related to the issue of personal data protection. Due to these reasons it is not possible to analyse the length of the process or sanctions without detailed review of individual court files.

In criminal proceedings, the protection is granted by authorities active in criminal proceedings, mostly the police, prosecutions and criminal courts. There are no proceeding costs for the complainant.

References:

| Official exact title EN | Official title (original lang.) | Full reference |
|-------------------------------------------------------------------|--------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Czech Civil Code (N. 40/1964 Coll) | Obcansky zakonik | Zakon c. 40/1964 Sb., obcansky zakonik. http://business.center.cz/business/pravo/zakony/obcanzak/ |
| Czech Data Protection Act (N. 101/2000 COII). | Zakon o ochrane osobnich udaju | Zakon c. 101/2000 Sb., o ochrane osobnich udaju. http://business.center.cz/business/pravo/zakony/ooou/ |
| Czech Criminal Code (N. 40/2009 | Trestní zákoník | Zákon č. 40/2009 Sb., trestní zákoník http://business.center.cz/business/pravo/zakony/trestni-zakonik/ |
| Annual report of the Office for Personal Data Protection for 2009 | Výroční zpráva Úřadu pro ochranu osobních údajů pro rok 2009 | Czech Republic, The Office for Personal Data Protection (Úřad pro ochranu osobních údajů) (2011), Výroční zpráva Úřadu pro ochranu osobních údajů pro rok 2009 (Annual report of the Office for Personal Data Protection for 2009), Brno, Masarykova univerzita v Brně, 2010, available at: http://www.uoou.cz/uoou.aspx?menu=201 |

¹³ Czech Republic, The Ministry of Justice (Ministerstvo spravedlnosti) (2011), Statistický přehled soudních agend, druhá část, rok 2010 (Statistical overview of litigation, the second part, year 2010), p. 105-106.

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| Annual report of the Office for Personal Data Protection for 2010 | Výroční zpráva Úřadu pro ochranu osobních údajů pro rok 2010 | Czech Republic, The Office for Personal Data Protection (Úřad pro ochranu osobních údajů) (2011), Výroční zpráva Úřadu pro ochranu osobních údajů pro rok 2010 (Annual report of the Office for Personal Data Protection for 2010), Brno, Masarykova univerzita v Brně, 2011 available at: http://www.uoou.cz/uoou.aspx?menu=201&submenu=202 |
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| Statistical overview of criminality, year 2010 | Statistický přehled kriminality, rok 2010 | Czech Republic, The Ministry of Justice (Ministerstvo spravedlnosti) (2011), Statistický přehled kriminality, rok 2010 (Statistical overview of criminality, year 2010), available at: http://cslav.justice.cz/InfoData/statisticke-rocenky.html;jsessionid=ac93c4e9e73de0b9743e84f37504 |
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Annex

| Redress Mechanism Number | First Instance | Type of possible outcomes of procedure | Total Number of times this procedure was initiated in 2009 | Total Number of times this procedure was initiated in 2010 | Total Number of times this procedure was initiated in 2011 |
|--------------------------|---------------------------|----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Data protection authority | fine, corrective action | 879(number of complaints) 143 (number of initiated investigations) 99 (administrative proceedings) ¹⁴ 67 (fines) 195 (corrective action) ¹⁵ | 1039(number of complaints) 106(number of initiated investigations) 151 (administrative proceedings) ¹⁶ 111 (fines) 161 (corrective action) ² | 1119(number of complaints) 179(number of initiated investigations) 126 (administrative proceedings) ¹⁷ 102 (fines) 201 (corrective action) ² |
| 2 | District civil court | refraining from interfering with the rights, | 551 ¹⁹ | 568 ²⁰ | Data for the year 2011 are not yet |

¹⁴ Czech Republic, The Office for Personal Data Protection (*Úřad pro ochranu osobních údajů*) (2011), Výroční zpráva Úřadu pro ochranu osobních údajů pro rok 2009 (*Annual report of the Office for Personal Data Protection for 2009*), Brno, Masarykova univerzita v Brně, 2010, p.8, available at: <http://www.uouu.cz/uouu.aspx?menu=201&submenu=202>

¹⁵ Czech Republic, Answer provided by the Office for Personal Data Protection responding to information request, 20.8.2012

¹⁶ Czech Republic, The Office for Personal Data Protection (*Úřad pro ochranu osobních údajů*) (2011), Výroční zpráva Úřadu pro ochranu osobních údajů pro rok 2010 (*Annual report of the Office for Personal Data Protection for 2010*), Brno, Masarykova univerzita v Brně, 2011, p.8, available at: <http://www.uouu.cz/uouu.aspx?menu=201&submenu=202>

¹⁷ Czech Republic, The Office for Personal Data Protection (*Úřad pro ochranu osobních údajů*) (2011), Výroční zpráva Úřadu pro ochranu osobních údajů pro rok 2011 (*Annual report of the Office for Personal Data Protection for 2011*), Brno, Masarykova univerzita v Brně, 2012, p.7, available at: <http://www.uouu.cz/uouu.aspx?menu=201&submenu=202>

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|---|-------------------------------------------|-------------------------------------------------------------------------------|------------------------------------------------------------------------|-------------------------------------------------------------------------|-----------------------------------------------|
| | | financial satisfaction ¹⁸ | | | available. |
| 3 | District criminal court | imprisonment, suspended sentence, fine | 14 (number of crimes) 3 (number of convicted persons) ²¹ | 25 (number of crimes) 17 (number of convicted persons) ²² | Data for the year 2011 are not yet available. |
| 4 | The Public Defender of Rights (Ombudsman) | request that authorities or institutions ensure remedy, problem medialization | 22 ²³ | 23 ¹⁰ | 21 ¹⁰ |

19 Number of cases concerning the protection of personality (not only personal data protection cases); Czech Republic, The Ministry of Justice (*Ministerstvo spravedlnosti*) (2010), *Statistický přehled soudních agend, druhá část, rok 2009 (Statistical overview of litigation, the second part, year 2009)*, p. 11, available at: <http://cslav.justice.cz/InfoData/statisticke-rocenky.html;jsessionid=ac93c4e9e73de0b9743e84f37504>

20 Number of cases concerning the protection of personality (not only personal data protection cases); Czech Republic, The Ministry of Justice (*Ministerstvo spravedlnosti*) (2011), *Statistický přehled soudních agend, druhá část, rok 2010 (Statistical overview of litigation, the second part, year 2010)*, p. 11, available at: <http://cslav.justice.cz/InfoData/statisticke-rocenky.html;jsessionid=ac93c4e9e73de0b9743e84f37504>

¹⁸ There are no centralized statistics related to the outcomes of proceedings.

21 Number of cases concerning § 239 and § 240 of the Penal Code (No. 140/1961 Coll.); Czech Republic, The Ministry of Justice (*Ministerstvo spravedlnosti*) (2010), *Statistický přehled kriminality, rok 2009 (Statistical overview of criminality, year 2009)*, p. 293-294, available at: <http://cslav.justice.cz/InfoData/statisticke-rocenky.html;jsessionid=ac93c4e9e73de0b9743e84f37504>

22 Number of cases concerning § 239 and § 240 of the Penal Code (No. 140/1961 Coll.) and § 180, § 182 and § 183 of the New Penal Code (No. 40/2009 Coll.); Czech Republic, The Ministry of Justice (*Ministerstvo spravedlnosti*) (2011), *Statistický přehled kriminality, rok 2010 (Statistical overview of criminality, year 2010)*, p. 294, 497-503, available at: <http://cslav.justice.cz/InfoData/statisticke-rocenky.html;jsessionid=ac93c4e9e73de0b9743e84f37504>

23 Czech Republic, Answer provided by the Office of the Public Defender of Rights responding to information request, 3.5.2012