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Ad Hoc Information Report

Data protection: Redress mechanisms and their use

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Mapping of Redress mechanisms in the area of data protection

Redress Mechanism Number	Type of possible outcomes of procedure	First Instance	Total Number of times this procedure was initiated in 2009 (please provide source of information in footnote)	Total Number of times this procedure was initiated in 2010 (please provide source of information in footnote)	Total Number of times this procedure was initiated in 2011 (please provide source of information in footnote)
1	Precept, penalty payment	Data Protection Inspectorate (<i>Andmekaitse Inspeksioon</i>)	216 ¹	304 ²	275 ³
2	Fine	Data Protection Inspectorate (<i>Andmekaitse Inspeksioon</i>)	46 ⁴	25 ⁵	30 ⁶
3	Compensation	County court (<i>ringkonnakohus</i>)	1 ⁷	1 ⁸	0 ⁹
4	Pecuniary punishment, imprisonment	County court (<i>ringkonnakohus</i>)	1 ¹⁰	6 ¹¹	11 ¹²
5	Compensation	Administrative court (<i>halduskohus</i>)	0 ¹³	0 ¹⁴	0 ¹⁵

¹ Estonia, Data Protection Inspectorate (*Andmekaitse Inspeksioon*), (2012a).

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Estonia, State Chancellery (*Riigikantselei*).

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

Detailed information

Ad Redress Mechanism Number 1 (precept):

- Range of possible outcomes: Precept, penalty payment up to €9,600 if the precept is not fulfilled.¹⁶
- Legal basis: § 40 of Personal Data Protection Act (*Isikuandmete kaitse seadus*).¹⁷
- Type of procedure: Data protection authority.
- Possibilities of appeal: Data protection authority or Administrative Court, followed by court of appeal and the Supreme Court according to rules relating to contesting of an administrative act.¹⁸
- Burden of proof: None. Data Protection Inspectorate (*Andmekaitse Inspektsioon*) based on information provided by the complainant initiates the mechanism.
- Available mechanism to lower the burden of proof: Not available.
- Requirement of legal representation: No.
- Is there free legal advice/representation available from a public body (please specify the public body)?: Yes, the Data Protection Inspectorate offers legal advice via phone, mail or e-mail.¹⁹
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?: According to § 33(5) of the Personal Data Protection Act, the Data Protection Inspectorate can initiate supervision proceedings on the basis of a complaint or on its own initiative.²⁰ Any other person can thus notify the Inspectorate using a letter of notice, which can be used to initiate the mechanism on its own initiative.
- Cost of procedure: None for the applicant.
- Average duration of procedure: There is no statistical data available regarding average duration of procedures. According to § 38 of the Personal Data Protection Act, a complaint has to be settled within 30 working days. That deadline can be extended for 60 days maximum.²¹
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010 and 2011:
Based on the procedure, precepts were issued: 25 (2009); 78 (2010); 38 (2011).²²
Recommendations for better fulfillment or implementation of the Personal Data Protection Act: none (2009); 53 (2010); 36 (2011).²³
Proposals for better fulfillment or implementation of the Personal Data Protection Act: 52 (2009); 95 (2010); 94 (2011).²⁴

¹⁶ Estonia, Personal Data Protection Act (*Isikuandmete kaitse seadus*), § 40 (2).

¹⁷ *Ibid.*

¹⁸ Estonia, Administrative Procedure Act (*Haldusmenetluse seadus*), Chapter 5.

¹⁹ Estonia, Data Protection Inspectorate (*Andmekaitse Inspektsioon*), (2012b).

²⁰ Estonia, Personal Data Protection Act (*Isikuandmete kaitse seadus*), § 33 (5).

²¹ Estonia, Personal Data Protection Act (*Isikuandmete kaitse seadus*), § 38.

²² Estonia, Data Protection Inspectorate (*Andmekaitse Inspektsioon*), (2012a).

²³ *Ibid.*

²⁴ *Ibid.*

Ad Redress Mechanism Number 2 (fine):

- Range of possible outcomes: fine up to 300 fine units (€1,200) for natural persons or up to €32,000 for legal persons.²⁵
- Legal basis: § 42 and § 43 of the Personal Data Protection Act,²⁶ Code of Misdemeanour Procedure (*Väärteomenetluse seadustik*).²⁷
- Type of procedure: Data protection authority.
- Possibilities of appeal: Administrative Court, followed by Appeals Court.²⁸
- Burden of proof: Data Protection Inspectorate based on information provided by the complainant initiates the mechanism.²⁹
- Available mechanism to lower the burden of proof: Not available.
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own?: No.
- Is there free legal advice/representation available from a public body (please specify the public body)?: Yes, the Data Protection Inspectorate offers legal advice via phone, mail or e-mail.³⁰
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?: No.
- Cost of procedure: None.
- Average duration of procedure: No statistical data available specifically for data protection mechanisms. However, the overall duration of misdemeanour proceedings was 88 days as of 31 December 2011.³¹
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010 and 2011: No statistical data is available regarding outcomes.³²

Ad Redress Mechanism Number 3 (compensation):

- Range of possible outcomes: Compensation.
- Legal basis: § 1046 of the Law of Obligations Act (*Võlaõigusseadus*),³³ Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*).³⁴
- Type of procedure: Civil.
- Possibilities of appeal: Appeals Court, followed by Supreme Court.
- Burden of proof: The plaintiff has the burden of proof.³⁵
- Available mechanism to lower the burden of proof: Not available.
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own?: Yes, except for appeals to the Supreme Court.³⁶
- Is there free legal advice/representation available from a public body (please specify the public body)?: Not specifically, though there is a system of state legal aid offered by sworn attorneys for persons who cannot afford to represent themselves in court.³⁷

²⁵ Estonia, Personal Data Protection Act (*Isikuandmete kaitse seadus*), § 42 and § 43.

²⁶ *Ibid.*

²⁷ Estonia, Code of Misdemeanour Procedure (*Väärteomenetluse seadustik*).

²⁸ Estonia, Code of Misdemeanour Procedure (*Väärteomenetluse seadustik*), chapters 11 and 12.

²⁹ Estonia, Personal Data Protection Act (*Isikuandmete kaitse seadus*), § 44 (2).

³⁰ Estonia, Data Protection Inspectorate (*Andmekaitse Inspeksioon*), (2012b).

³¹ Estonia, Ministry of Justice (*Justiitsministeerium*), p. 29.

³² Estonia, Data Protection Inspectorate (*Andmekaitse Inspeksioon*), (2012a).

³³ Estonia, Law of Obligations Act (*Võlaõigusseadus*).

³⁴ Estonia, Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*).

³⁵ Estonia, Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*), § 230 (1).

³⁶ Estonia, Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*), § 218 (3).

- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?: No.
- Cost of procedure: State fees depend on the value of the claim, ranging from €63.91 (value up to €319.55) increasing proportionally to 1.5% of the value of the claim (value over €639,116.48).³⁸ For example, the value of a claim of €5,000 would mean a state fee of €639.11.
- Average duration of procedure: There is no statistical data available regarding duration of procedure in data protection cases. However, the average duration of civil procedure in county courts (*ringkonnakohus*) was 206 days as of 31 December 2011.³⁹
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010 and 2011: No statistical data is available regarding compensation awarded in civil compensation claims in cases related to data protection.⁴⁰

Ad Redress Mechanism Number 4 (criminal):

- Range of possible outcomes: Pecuniary punishment or up to one year of imprisonment (up to three years in case of identity theft).
- Legal basis: § 156 of the Penal Code (*Karistusseadustik*) (Violation of confidentiality of messages), § 157 of the Penal Code (Violation of obligation to maintain confidentiality of secrets which have become known in course of professional activities), § 157¹ of the Penal Code (Illegal disclosure of sensitive personal data), § 157² of the Penal Code (Illegal use of another person's identity).⁴¹
- Type of procedure: Criminal.
- Possibilities of appeal: Appeals Court, followed by Supreme Court.
- Burden of proof: The criminal procedure is initiated by the Office of the Prosecutor and other investigative authorities.⁴²
- Available mechanism to lower the burden of proof: None.
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own?: N/
- Is there free legal advice/representation available from a public body (please specify the public body)?: Not available.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?: No.
- Cost of procedure: None.
- Average duration of procedure: Statistical data regarding specific crimes is not available, though the overall average length of criminal proceedings in general proceedings is 493 days.⁴³ However, many cases analysed were settled in compromise procedures, which are significantly faster.⁴⁴
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010 and 2011: Based on § 157 of the Penal Code, in 2010 one pecuniary punishment of 10,380 kroons (€663.40) and in 2011 one acquittal. Based on § 157² of the Penal Code, in 2010 one imprisonment for five months and one imprisonment for two months,

³⁷ Estonia, State Legal Aid Act (*Riigi õigusabi seadus*).

³⁸ Estonia, State Fees Act (*Riigilõivuseadus*), § 57 (1) and Annex 1.

³⁹ Estonia, Ministry of Justice (*Justiitsministeerium*), p. 29.

⁴⁰ Estonia, State Chancellery (*Riigikantslei*).

⁴¹ Estonia, Penal Code (*Karistusseadustik*).

⁴² Estonia, Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), § 30 and § 31.

⁴³ Estonia, Ministry of Justice (*Justiitsministeerium*), p. 29.

⁴⁴ Estonia, State Chancellery (*Riigikantslei*).

two imprisonments for six months, one for four months. In 2011, three cases of imprisonment each for four months, three for three months, one for nine months, one for ten months, one for one month and two for six months.⁴⁵

Ad Redress Mechanism Number 5 (administrative):

- Range of possible outcomes: Compensation.
- Legal basis: § 37 of the Code of Administrative Procedure (*Halduskohtumenetluse seadustik*).⁴⁶
- Type of procedure: Administrative.
- Possibilities of appeal: Appeals Court, followed by Supreme Court.⁴⁷
- Burden of proof: The complainant has the burden of proof.
- Available mechanism to lower the burden of proof: None.
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own?: Yes, except for appeals to the Supreme Court.
- Is there free legal advice/representation available from a public body (please specify the public body)?: Not specifically, though there is a system of state legal aid offered by sworn attorneys for persons who cannot afford to represent themselves in court.⁴⁸
- Is there *locus standi* for DP authorities, civil society organisations and associations to initiate/be active in procedure?: No.
- Cost of procedure: 5% of the value of the claim in case damage is specified, €319.55 in case damage is unspecified.⁴⁹
- Average duration of procedure: No specific information available, though the average duration of all administrative proceedings in administrative courts was 181 days as of 31 December 2011.⁵⁰
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010 and 2011: No data available.⁵¹

Bibliography

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Estonia, Ministry of Justice (*Justiitsministeerium*) (2012), *I ja II astme kohtute statistilised menetlusandmed: 2011.a kokkuvõte*. Tallinn.

⁴⁵ *Ibid.*

⁴⁶ Estonia, Code of Administrative Court Procedure (*Halduskohtumenetluse seadustik*).

⁴⁷ Estonia, Code of Administrative Court Procedure (*Halduskohtumenetluse seadustik*), chapters 4 and 5.

⁴⁸ Estonia, State Legal Aid Act (*Riigi õigusabi seadus*).

⁴⁹ Estonia, State Fees Act (*Riigilõivuseadus*), § 57 (14) and (15).

⁵⁰ Estonia, Ministry of Justice (*Justiitsministeerium*), p. 29.

⁵¹ Estonia, State Chancellory (*Riigikantslei*).

Estonia, State Chancellery (*Riigikantselei*) (2012), *Database of court judgments*, accessed on 23 May 2012.

Official exact title EN	Official title (original lang.)	Full reference
<ul style="list-style-type: none"> Code of Criminal Procedure 	<ul style="list-style-type: none"> <i>Kriminaalmenetluse seadustik</i> 	Estonia, Code of Criminal Procedure (<i>Kriminaalmenetluse seadustik</i>), RT I, 21.03.2011, 7, 21 March 2011.
<ul style="list-style-type: none"> Personal Data Protection Act 	<ul style="list-style-type: none"> <i>Isikuandmete kaitse seadus</i> 	Estonia, Personal Data Protection Act (<i>Isikuandmete kaitse seadus</i>), RT I, RT I, 30.12.2010, 11, 30 December 2010.
<ul style="list-style-type: none"> Code of Administrative Court Procedure 	<ul style="list-style-type: none"> <i>Halduskohtumenetluse seadustik</i> 	Estonia, Code of Administrative Court Procedure (<i>Halduskohtumenetluse seadustik</i>), RT I, 23.02.2011, 3, 14 February 2011.
<ul style="list-style-type: none"> Penal Code 	<ul style="list-style-type: none"> <i>Karistusseadustik</i> 	Estonia, Penal Code (<i>Karistusseadustik</i>), RT I, 04.04.2012, 3, 4 April 2012.
<ul style="list-style-type: none"> State Fees Act 	<ul style="list-style-type: none"> <i>Riigilõivuseadus</i> 	Estonia, State Fees Act (<i>Riigilõivuseadus</i>), RT I, 16.05.2012, 4, 16 May 2012.
<ul style="list-style-type: none"> State Legal Aid Act 	<ul style="list-style-type: none"> <i>Riigi õigusabi seadus</i> 	Estonia, State Legal Aid Act (<i>Riigi õigusabi seadus</i>), RT I, 28.12.2011, 16, 28 December 2011.
<ul style="list-style-type: none"> Code of Misdemeanour Procedure 	<ul style="list-style-type: none"> <i>Väärteomenetluse seadustik</i> 	Estonia, Code of Misdemeanour Procedure (<i>Väärteomenetluse seadustik</i>), RT I, 29.12.2011, 61, 29 December 2011.
<ul style="list-style-type: none"> Administrative Procedure Act 	<ul style="list-style-type: none"> <i>Haldusmenetluse seadus</i> 	Estonia, Administrative Procedure Act (<i>Haldusmenetluse seadus</i>), RT I, 23.02.2011, 8, 23 February 2011.