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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	Total Number of times this procedure was initiated in 2010	Total Number of times this procedure was initiated in 2011
1	Contractual Responsibility	Civil court	-- ¹	-- ²	-- ³
2	Extra-contractual Responsibility	Civil court	-- ⁴	-- ⁵	-- ⁶
3	Fine	Criminal court	-- ⁷	-- ⁸	-- ⁹
4	Compensation	Civil court/administrative instance	-- ¹⁰	-- ¹¹	-- ¹²

¹There are not data available in this area. General Council of the Judiciary, (2009). We have also consulted the General Council of the Judiciary (GCJ) (*Consejo General del Poder Judicial CGPJ*)

² There are not data available in this area. General Council of the Judiciary, (2010), *Memory*, We have also consulted the CGPJ.

³ There are not data available in this area. General Council of the Judiciary, (2011). We have also consulted the CGPJ.

⁴ There are not data available in this area. General Council of the Judiciary, (2009). We have also consulted the CGPJ.

⁵ There are not data available in this area. General Council of the Judiciary, (2010). We have also consulted the CGPJ.

⁶ There are not data available in this area. General Council of the Judiciary, (2011). We have also consulted the CGPJ.

⁷ There are not data available in this area. General Council of the Judiciary, (2009). We have also consulted the CGPJ.

⁸ There are not data available in this area. General Council of the Judiciary, (2010). We have also consulted the CGPJ.

⁹ There are not data available in this area. General Council of the Judiciary, (2011). We have also consulted the CGPJ.

¹⁰ There are not data available in this area. General Council of the Judiciary, (2009). We have consulted the CGPJ.

¹¹ There are not data available in this area. General Council of the Judiciary, (2010). We have also consulted the CGPJ.

¹² There are not data available in this area. General Council of the Judiciary, (2011). We have also consulted the CGPJ.

5	Access, rectification, cancellation and objection rights protection	Spanish Data protection authority	1881¹³	1643¹⁴	1901¹⁵
6	Control function	Spanish Data Protection authority	4136¹⁶	4302¹⁷	5389¹⁸
7	Access, rectification, cancellation and objection rights protection in Madrid Autonomous Community	Madrid Data Protection authority	101¹⁹	58²⁰	135²¹
8	Control function in Madrid Autonomous Community	Data Protection Authority of Community of Madrid.	215²²	118²³	144²⁴
9	Access, rectification, cancellation and objection rights protection in Catalonia.	Catalan Data Protection Authority	37²⁵	45²⁶	44²⁷
10	Control	Catalan Data	113²⁸	115²⁹	69³⁰

¹³ Spanish Data Protection Authority (2009), p. 50.

¹⁴ Spanish Data Protection Authority (2010), p. 48.

¹⁵ Information provided by Spanish Data Protection Authority.

¹⁶ Spanish Data Protection Authority (2009), p. 50.

¹⁷ Spanish Data Protection Authority (2010), p. 48.

¹⁸ Information provided by the Spanish Data Protection Authority.

¹⁹ Data Protection Authority of Community of Madrid (2009), p. 17.

²⁰ Data Protection Authority of Community of Madrid (2010), p. 21.

²¹ Information provided by the Data Protection Authority of Community of Madrid.

²² Data Protection Authority of Community of Madrid (2009), p.17.

²³ Data Protection Authority of Community of Madrid (2010), p. 22.

²⁴ Information provided by the Data Protection Authority of Community of Madrid.

²⁵ Catalan Data Protection Authority (2010), p. 60. Data referred exclusively to matters within the competence of Catalan Data Protection Authority. Data referred exclusively to matters within the competence of Catalan Data Protection Authority.

²⁶ Catalan Data Protection Authority (2010), p. 60. Data referred exclusively to matters within the competence of Catalan Data Protection Authority.

²⁷ Information provided by Catalan Data Protection Authority. Data referred exclusively to matters within the competence of Catalan Data Protection Authority.

	function in Catalonia.	Protection Authority			
11	Access, rectification, cancellation and objection rights protection in Basque Country	Basque Data Protection Public Authority	18 ³¹	21 ³²	13 ³³
12	Control function in Basque Country	Basque Data Protection Public Authority	36 ³⁴	53 ³⁵	22 ³⁶

Detailed information

This report presents the detailed information about relevant redresses mechanisms in the area of data protection in Spain. These relevant redresses mechanisms are the following:

1. Contractual Responsibility

- Range of possible outcomes:

The law does not regulate a specific range of compensation. It can consist in any type of rectification, a financial compensation, or both.

- Legal basis:

This mechanism is regulated by Article 1101 of Civil Code (*Código Civil*).³⁷ And by Article 249.1,2 of Civil Procedure Law (*Ley 1/2000, de 7 de Enero, de Enjuiciamiento Civil*).³⁸

According to article 1101 of Civil Code (*Código Civil*) “persons who, in the performance of their obligations, should incur in wilful misconduct, negligence or default, and those who in any way should contravene the content of the obligation shall be subject to compensation of any damage caused”.

²⁸ Catalan Data Protection Authority (2010), p. 61. Data referred exclusively to matters within the competence of Catalan Data Protection Authority.

²⁹ Catalan Data Protection Authority (2010), p. 61. Data referred exclusively to matters within the competence of Catalan Data Protection Authority.

³⁰ Information provided by Catalan Data Protection Authority. Data referred exclusively to matters within the competence of Catalan Data Protection Authority.

³¹ Basque Data Protection Authority (2009), p. 15.

³² Basque Data Protection Authority (2010), p. 16.

³³ Basque Data Protection Authority (2011), p. 15.

³⁴ Basque Data Protection Authority (2009), p. 15.

³⁵ Basque Data Protection Authority (2010), p. 16.

³⁶ Basque Data Protection Authority (2011), p. 15.

³⁷ Spain (1889), Civil Code (*Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil*). BOE 25 July 1889.

³⁸ Spain (2000), Civil Procedure Law (*Ley 1/2000, de 7 enero, de Enjuiciamiento Civil*). BOE 8 January 2000.

And according to Article 249.1,2 of Civil Procedure Law (*Ley 1/2000, de 7 de Enero, de Enjuiciamiento Civil*) people whose personal data right had been breached in contractual relationship can initiate a procedure asking for compensation.

- Type of procedure:

Civil procedure. As data protection is a fundamental right, the general request for compensation will be substantiated through the ordinary process.³⁹

- Possibilities of appeal:

It's possible to appeal in 2nd instance if the outcome of the first sentence exceeds €3000,⁴⁰ and in specific cases in 3rd instance.⁴¹

- Burden of proof:

The applicant must prove the damage caused by negligence or default and the contractual relationship.

- Available mechanism to lower the burden of proof:

A mechanism to lower the burden of proof is not available.

- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own?

Legal representation is necessary.⁴² Its realization should take priority,⁴³ and the Public Prosecutor will intervene.⁴⁴ Nevertheless, if the request is only for a rectification, it will take place at an oral judgment.⁴⁵ A legal representation is not required,⁴⁶ and the Public Prosecutor will not intervene.

- Is there free legal advice/representation available from a public body (please specify the public body)?

There is no legal advice or representation available from a public body.

- Is there locus stand for DP authorities, civil society organisations and associations to initiate/be active in procedure?

There is no locus stand for DP authorities, civil society organizations and associations to initiate or be active in the procedure.

- Cost of procedure:

There are not data about the average cost of the procedure.⁴⁷

- Average duration of procedure

There are not data about the duration of the procedure.⁴⁸

- Outcomes for 2009, 2010, 2011

There are not data available about outcomes of the procedure.⁴⁹

2. Extra-contractual Responsibility

- Range of possible outcomes

The law does not regulate the type of the compensation. It can consist in any type of rectification, a financial compensation, or both.

- Legal basis:

Articles 1902 and 1903 of Civil Code (*Código Civil*) and Article 249.1,2 of Civil Procedure Law (*Ley 1/2000, de 7 de Enero, de Enjuiciamiento Civil*).

³⁹ *Ibid.* Article 249.1,2

⁴⁰ *Ibid.* Arts. 455-467

⁴¹ *Ibid.* Art. 477

⁴² *Ibid.* Arts. 23 and 31

⁴³ *Ibid.* Art. 249.1,2

⁴⁴ *Ibid.* Art. 249.1,2

⁴⁵ *Ibid.* Art. 250.1, 9

⁴⁶ *Ibid.* Arts. 23 and 31

⁴⁷ Information provided by General Council of the Judiciary.

⁴⁸ Information provided by General Council of the Judiciary.

⁴⁹ Information provided by General Council of the Judiciary.

The Spanish Civil Code (*Código Civil*) regulates own extra-contractual responsibility in Article 1902. In this sense, “the person who, as a result of an action or omission, causes damage to another by his fault or negligence shall be obliged to repair the damaged caused”. This obligation, in accordance with Article 1903 of the Civil Code (*Código Civil*), shall be enforceable “not only as a result of one’s own actions or omissions but also of those of such persons for whom one is liable” (parents are liable for damages caused by their children, guardians are liable for damages caused by minors or incapacitated persons who are under their authority, etc.)

According to Article 249.1,2 of Civil Procedure Law (*Ley 1/2000, de 7 de Enero, de Enjuiciamiento Civil*) people whose right to data protection had been breached in contractual relationship can initiate a procedure asking for a compensation.

- Type of procedure:

Civil procedure. As data protection is a fundamental right, the general request for compensation will be substantiated through the ordinary process according to Article 249.1,2 of Civil Procedure Law (*Ley 1/2000, de 7 de Enero, de Enjuiciamiento Civil*).

- Possibilities of appeal:

It’s possibility to appeal in 2nd instance if the outcome of the sentence exceeds €3000,⁵⁰ and in specific cases in 3rd instance.⁵¹

- Burden of proof:

The applicant must prove the damage caused by negligence or default and the contractual relationship.

- Available mechanism to lower the burden of proof:

A mechanism to lower the burden of proof is not available.

- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own?

Legal representation is necessary.⁵² Its realization should take priority,⁵³ and the Public Prosecutor will intervene.⁵⁴ Nevertheless, if the request is only for a rectification, it will take place at an oral judgment.⁵⁵ In this case, legal representation is not necessary,⁵⁶ and the Public Prosecutor will not intervene.

- Is there free legal advice/representation available from a public body (please specify the public body)?

There is no legal advice or representation available from a public body.

- Is there locus stand for DP authorities, civil society organisations and associations to initiate/be active in procedure?

There is no locus stand for DP authorities, civil society organizations and associations to initiate or be active in the procedure.

- Cost of procedure:

There are not data about cost.⁵⁷

- Average duration of procedure:

There are not data about average duration of the procedure.⁵⁸

- Outcomes for 2009, 2010, 2011:

There are not data about outcomes of the procedure.⁵⁹

⁵⁰ Spain (2000), Arts. 455-467.

⁵¹ *Ibid.* Art. 477.

⁵² *Ibid.* Arts. 23 and 31.

⁵³ *Ibid.* Art. 249.1,2.

⁵⁴ *Ibid.* Art. 249.1,2.

⁵⁵ *Ibid.* Art. 250.1, 9

⁵⁶ *Ibid.* Arts. 23 and 31.

⁵⁷ Information provided by General Council of the Judiciary.

⁵⁸ Information provided by General Council of the Judiciary.

⁵⁹ Information provided by General Council of the Judiciary.

3. Criminal responsibility

- Range of possible outcomes:

Imprisonment from one to seven years; and fine of twelve to twenty-four months for criminal actions of disclosure of secrets or against intimacy. This criminal responsibility is enforced in relation to actions of authority or public officer with the penalties indicated in their upper half and also with the disqualification to public service from six to twelve years. Moreover, the civil responsibility (restitution, reparation and compensation of material and moral damages) derived from these criminal offences is resolved by criminal courts (with the exception that the applicant reserved the request of the civil responsibility to ask it to the civil court).

- Legal basis:

Title X, chapter I of the Criminal Code (*Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*)⁶⁰

- Type of procedure:

Criminal procedure.

- Possibilities of appeal:

There is the possibility of appeal the criminal court resolution in 2nd instance,⁶¹ and, in certain cases, it is possible to appeal in cassation.⁶²

- Burden of proof:

The applicant must prove the criminal offence and the guilt.

- Available mechanism to lower the burden of proof:

A mechanism to lower the burden of proof is not available.

- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own?

The complaint can initiate/be active in a procedure on his/her own. As a general rule, the complainant or his/her legal representative, or the Public Body in the case of minors and incapable persons, have to initiate the procedure because it is a semiprivate criminal offence.⁶³ There is an exception to criminal offences caused by public authorities, or criminal offences that affect general interest or to multiple persons.⁶⁴

- Is there free legal advice/representation available from a public body (please specify the public body)?

The Public Prosecutor is the legal representative of minors and incapable persons.⁶⁵

- Is there locus stand for DP authorities, civil society organisations and associations to initiate/be active in procedure?

There is not locus stand for DP authorities, civil society organizations and associations to initiate or be active in procedure.

- Cost of procedure:

There are not data about cost of the procedure.⁶⁶

- Average duration of procedure:

There are not data about average duration of the procedure.⁶⁷

- Outcomes for 2009, 2010, 2011:

There are not data about outcomes of the procedure.⁶⁸

⁶⁰ Spain (1995), Criminal Code (*Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*), Arts. 197 to 201. BOE 24 November 1995.

⁶¹ Spain (1882), Criminal Procedure Law (Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal) BOE 14 September 1882. Arts. 790-792.

⁶² *Ibid.* Arts. 847 and 848.

⁶³ Spain (1995), Art. 201.1

⁶⁴ *Ibid.* Art. 201.

⁶⁵ *Ibid.* Art. 201.1

⁶⁶ Information provided by CGPJ. We have also consulted CGPJ Memories (2009, 2010) and Public Ministry Memories (2009, 2010, 2011).

⁶⁷ Information provided by CGPJ. We have also consulted CGPJ Memories (2009, 2010) and Public Ministry Memories (2009, 2010, 2011).

4. Compensation

- Range of possible outcomes:

The law regulates a range of compensation from 0, 2000, or 6000 up to unlimited compensation.

- Legal basis:

Article 19 of the Spanish Data Protection Act (*Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal*) regulates this special mechanism to ask for a compensation in order to protect damages caused of a breach of the Act.⁶⁹

- Type of procedure:

There are two types of procedure: administrative and civil.

We need to differentiate between private and public files. In this sense, according to Article 19.3, when the damage is caused by private files the action must be exercised in civil courts.

According to article 19.2, if the damage is caused by a public file, the complainant will exercise the action as expected by Administrative Procedures in Patrimonial Responsibility matters Regulation (*Real Decreto 429/1993, de 26 de marzo, por el que se aprueba el Reglamento de los Procedimientos de las Administraciones Públicas en material de Responsabilidad Patrimonial*).⁷⁰

- Possibilities of appeal:

In the case of civil procedure, it's possible to appeal in 2nd instance if the outcome of the sentence exceeds €3000,⁷¹ and in specific cases in 3rd instance.⁷²

And in the case of administrative instance, it is possible to appeal to administrative judicial courts, in first, second, and in specific cases in 3rd instance.⁷³

- Burden of proof:

In both cases (civil and administrative actions) it is necessary to prove the damage caused by the breach of Data Protection Act.

- Available mechanism to lower the burden of proof:

A mechanism to lower the burden of proof is not available.

- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own?

In a civil case when the request for compensation doesn't exceed €6000, it will be substantiated through the oral judgment,⁷⁴ and if the request doesn't exceed €2000 it won't be required a legal representation.⁷⁵ To apply for a compensation greater than €6000 it is necessary to go to an ordinary process⁷⁶, with legal representation.⁷⁷

In an administrative case the administrative procedure can be initiated by the Administration ex officio or by the applicant on his/her own without legal representation.⁷⁸ The applicant also can be active in the administrative procedure on his/her own. In case of appeal to administrative judicial court it is required legal representation.⁷⁹

⁶⁸ Information provided by CGPJ. We have also consulted CGPJ Memories (2009, 2010) and Public Ministry Memories (2009, 2010, 2011).

⁶⁹ Spain (1999), Organic Act 15/1999 of Data Protection (*Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal*). BOE 14 December 1999.

⁷⁰ Spain (1993), Royal Decree 429/1993 on Administrative Procedures in Patrimonial Responsibility matters Regulation (*Real Decreto 429/1993, de 26 de marzo, por el que se aprueba el Reglamento de los Procedimientos de las Administraciones Públicas en material de Responsabilidad Patrimonial*). BOE 4 May 1993.

⁷¹ Spain (2000), Arts. 455-467.

⁷² *Ibid.* Art. 477.

⁷³ Spain (1998), Act 29/1998 of 13 July regulator Contentious-Administrative Jurisdiction (*Ley 29/1998, de 13 de julio, reguladora de la Jurisdicción Contencioso-Administrativa*). Arts 25, and section 4 of Additional Provision nº 4.

⁷⁴ Spain (2000), Art. 250.2.

⁷⁵ *Ibid.* Arts. 23 and 31.

⁷⁶ *Ibid.* Art. 249.2.

⁷⁷ *Ibid.* Arts. 23 and 31.

⁷⁸ Spain (1993), Arts. 5 and 6.

⁷⁹ Spain(1998), Arts. 23 and 24.

- Is there free legal advice/representation available from a public body (please specify the public body)?

There is no legal advice or representation available from a public body.

- Is there locus stand for DP authorities, civil society organisations and associations to initiate/be active in procedure?

There is no locus stand for DP authorities, civil society organizations and associations to initiate or be active in both procedures.

- Cost of procedure:

There are not data about cost of the procedure.⁸⁰

- Average duration of procedure:

There are not data about average duration of the procedure.⁸¹

- Outcomes for 2009, 2010, 2011:

There are not data about outcomes of the procedure.⁸²

5. Access, rectification, cancellation and objection rights protection.

- Range of possible outcomes:

This mechanism protects access, rectification, cancellation and objection to personal data.⁸³ The Spanish Data Protection Authority can require to make effective the exercise of these rights in ten days and to inform of such compliance to the Data Protection Authority in the same period.⁸⁴ This possibility does not exclude the right to compensation for damage (caused by the breach of Data Protection Act) that the complainant can ask to the competent court.⁸⁵

- Legal basis:

The mechanism is regulated by Title III of Data Protection, Act No 15- of 13 December 1999 (*Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal*) and chapter II of title IX of Data Protection, Implementing Decree No 1720 of 21 December 2007 (*Real Decreto 1720/2007, de 21 de diciembre, por el que se aprueba el Reglamento de desarrollo de la Ley Orgánica 15/1999, de 13 de diciembre, de protección de datos de carácter personal*).

- Type of procedure:

Data Protection Authority.

- Possibilities of appeal:

This is a procedure under Spanish Data Protection Authority. Its resolution puts an end to the administrative procedure according to Article 18.4 of the Data Protection Act. Nevertheless, the applicant may present a discretionary appeal in administrative instance within one month from the notification of the resolution⁸⁶; or directly a judiciary appeal in 2nd instance,⁸⁷ within two months from the notification.⁸⁸

- Burden of proof:

The complainant must prove a violation of Data Protection Act in the exercise his/her rights to access, rectification, cancellation or opposition to personal data.

⁸⁰ Information provided by General Council of the Judiciary.

⁸¹ Information provided by General Council of the Judiciary.

⁸² Information provided by General Council of the Judiciary.

⁸³ Spain (1999), Art. 18.

⁸⁴ Spain (2007), Royal Decree 1720/2007 Data Protection Implementing Organic Act 15/1999 of Data Protection Act (*Real Decreto 1720/2007, de 21 de diciembre, por el que se aprueba el Reglamento de desarrollo de la Ley Orgánica 15/1999, de 13 de diciembre, de protección de datos de carácter personal*). Art. 119.

⁸⁵ Spain (1999), Art. 19.

⁸⁶ Spain (1992), Act No 30/1992 of Legal Regime for the Public Administrations and Common Administrative Procedures (*Ley 30/1992, de 26 de noviembre, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*). Art. 116.

⁸⁷ Spain (1998), Arts 25, and section 4 of Additional Provision nº 4.

⁸⁸ *Ibid.* Art. 46.1

- Available mechanism to lower the burden of proof:
A mechanism to lower the burden of proof is not available.
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own?
The applicant can initiate/ be active in a procedure on his/her own.
- Is there free legal advice/representation available from a public body (please specify the public body)?
There is not free legal advice or representation available from a public body.⁸⁹
- Is there locus stand for DP authorities, civil society organisations and associations to initiate/be active in procedure?
There is not a locus stand for civil society organisations and associations to initiate or be active in procedure.⁹⁰
- Cost of procedure:
The procedure is free of charges for the applicant. There are not data about the cost of the procedure.⁹¹
- Average duration of procedure:
According to Art. 18.2 of Data Protection Act (*Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal*), and Article 118.1 of the Data Protection Implementing Decree (*Real Decreto 1720/2007, de 21 de diciembre, por el que se aprueba el Reglamento de desarrollo de la Ley Orgánica 15/1999, de 13 de diciembre, de protección de datos de carácter personal*), it must be resolved in a maximum of 6 months.⁹²
When the maximum length of time is exceeded and there is not a specific resolution, the applicant can consider that his/her request has been estimated by a positive administrative silence, as provided by Article 118.2 of the Data Protection Implementing Decree (*Real Decreto 1720/2007, de 21 de diciembre, por el que se aprueba el Reglamento de desarrollo de la Ley Orgánica 15/1999, de 13 de diciembre, de protección de datos de carácter personal*).
Nevertheless, there are not data about the average duration of the procedure.⁹³
- Outcomes for 2009, 2010, 2011:
The Spanish Data Protection Authority resolved 1947 cases dealing with protection of access, rectification, cancellation and objection rights to personal data in 2009.⁹⁴ The Authority protected these rights in 590 (355 with a full uphold, and 235 with a partial one) cases: Cancellation in 256 cases (204 with a full uphold, and 51 with a partial one), access in 228 (92 with a full uphold, and 136 with a partial one), and objection in 85 cases (58 with a full uphold, and 21 with a partial one), and finally it protected various rights in 22 cases (1 with a full uphold, and 21 with a partial one).
In 2010, this Authority resolved 1830 cases.⁹⁵ And its resolutions were positive in 793 cases: 350 in relation to cancellation (232 with a full uphold, 118 partial), 355 in relation to access (236 with a full uphold, 119 partial one), 25 in relation to rectification (14 with a full uphold, 11 partial), 55 in relation to objection (41 with a full uphold, 14 partial, and finally 5 in relation to various rights protection (2 with a full uphold and 3 partial).⁹⁶ And finally, the Data Protection Authority resolved 1939 protection rights cases in 2011.⁹⁷

⁸⁹ Spain (1999), Art. 18.1

⁹⁰ *Ibid.* Art. 18.1

⁹¹ Spanish Data Protection Authority (2009), (2010).

⁹² Spain (1999), Art. 18.3.

⁹³ Spanish Data Protection Authority (2009), (2010).

⁹⁴ Spanish Data Protection Authority (2009), p. 49.

⁹⁵ Spanish Data Protection Authority (2010), p. 48.

⁹⁶ Spanish Data Protection Authority (2010), p. 55.

⁹⁷ Information provided by Spanish Data Protection Authority.

6. Control function

- Range of possible outcomes:

The Spanish Data Protection Authority can fine from €900 up to €600.000 in private files cases⁹⁸; and can declare an infringement of a public administration in public files cases.⁹⁹ In both cases, and if there is a grave infringement, the Data Protection Authority can order the termination of the use of personal data. And if this requirement is not attended, the Authority can decide the immobilization of data files.¹⁰⁰

- Legal basis:

The legal procedure is regulated by Title VII of the Organic Data Protection Act No 15 of 13 December 1999 (*Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal*) and chapter III of title IX of Data Protection, Implementing Decree No 1720 of 21 December 2007 (*Real Decreto 1720/2007, de 21 de diciembre, por el que se aprueba el Reglamento de desarrollo de la Ley Orgánica 15/1999, de 13 de diciembre, de protección de datos de carácter personal*).

- Type of procedure:

Data Protection Authority.

Control function is a Spanish Data Protection Authority's mechanism to review the compliance of public and private actors in relation to data protection legislation.¹⁰¹ However, as an exception, this control function of public files in certain Autonomous Communities is subject to the competence of regional data protection authorities according to Article 41 of the Data Protection Act (*Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal*).

- Possibilities of appeal:

The resolution of the Spanish Data Protection Authority puts an end to the administrative procedure according to Article 18.4 of the Data Protection Act. Nevertheless, the applicant may present a discretionary appeal in administrative instance within one month from the notification of the resolution¹⁰²; or directly a judiciary appeal in 2nd instance,¹⁰³ within two months from the notification.¹⁰⁴

- Burden of proof:

In order to penalize an entity, it is necessary an infringement of the Data Protection Act (*Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal*).

- Available mechanism to lower the burden of proof:

A mechanism to lower the burden of proof is not available.

- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own?

The Data Protection Authority can initiate this procedure ex officio or upon complaint. In this sense, the complainant can initiate/be active in a procedure on his/her own.¹⁰⁵

- Is there free legal advice/representation available from a public body (please specify the public body)?

There is not free legal advice or representation available from a public body.

- Is there locus stand for DP authorities, civil society organisations and associations to initiate/be active in procedure?

Civil society organisations and associations can initiate the procedure with the presentation of a complaint.

⁹⁸ Spain (1999), Art. 45.

⁹⁹ *Ibid.* Art. 46.

¹⁰⁰ *Ibid.* Art. 49 and art. 121 of Spain (2007)

¹⁰¹ Spain (1999), Art. 40.

¹⁰² Spain (1992), Art. 116.

¹⁰³ Spain (1998), Arts 25, and section 4 of Additional Provision n° 4.

¹⁰⁴ *Ibid.* Art. 46.1.

¹⁰⁵ Spain (1999), Art. 37.

- Cost of procedure:

The procedure is free of charges. There are not data about the cost duration of the procedure.¹⁰⁶

- Average duration of procedure:

There are not data about the average duration of the procedure.¹⁰⁷

- Outcomes for 2009, 2010, 2011:

The Spanish Data Protection Authority imposed fines in 621 cases in 2009,¹⁰⁸ with %21,35 of minor infringements, %74,02 of grave infringements, and %4,63 of very grave infringements.¹⁰⁹ And with a total amount of €24.872.979,72.¹¹⁰

In 2010, this Authority imposed 767 fines,¹¹¹ with %34,35 of minor infringements, %63,14 of grave infringements, and %2,50 of very grave infringements;¹¹² and with a total amount of €17.497.410,2.¹¹³

Moreover, this Authority declared an infringement of a public administration by 71 resolutions in 2009:¹¹⁴ 18 in relation to local administration, 24 in relation to regional administration, 13 in relation to State administration, and 16 in relation to others public entities.¹¹⁵

And with 61 resolutions in 2010, the Data Protection Authority declared an infringement of a public administration:¹¹⁶ 29 in relation to local administration, 19 in relation to regional administration, 20 in relation to State administration, and 2 in relation to others public entities.¹¹⁷

Finally, the Data Protection Authority resolved 5293 cases in 2011.¹¹⁸

7. Access, rectification, cancellation and objection rights protection in relation to public files in Madrid Autonomous Community.

- Range of possible outcomes:

Data Protection Authority of Madrid Community can use this mechanism to order granting access, rectification, cancellation or objection to data.¹¹⁹ The Data Authority can require to make effective the exercise of these rights in ten days and to inform it of such compliance in the same period.¹²⁰

- Legal basis:

The mechanism is regulated by Articles 15 and 19 of Madrid Data Protection Act, Autonomous Community Act No 8 of 13 July 2001 (*Ley 8/2001, de 13 de Julio, de Protección de Datos de Carácter Personal en la Comunidad de Madrid*), and Title II of its Implementing Decree, Madrid Autonomous Community Decree No 67 of 22 May 2003 (*Decreto 67/2003, de 22 de mayo por el que se aprueba el Reglamento de desarrollo de las funciones de la Agencia de*

¹⁰⁶ Spanish Data Protection Authority (2009), (2010).

¹⁰⁷ Spanish Data Protection Authority (2009), (2010).

¹⁰⁸ Spanish Data Protection Authority (2009), p. 50.

¹⁰⁹ Spanish Data Protection Authority (2010), p. 51.

¹¹⁰ Spanish Data Protection Authority (2009), p. 51.

¹¹¹ Spanish Data Protection Authority (2010), p. 51.

¹¹² Spanish Data Protection Authority (2010), p. 49.

¹¹³ Spanish Data Protection Authority (2010), p. 51.

¹¹⁴ Spanish Data Protection Authority (2009), p. 50.

¹¹⁵ Spanish Data Protection Authority (2009), p. 55.

¹¹⁶ Spanish Data Protection Authority (2010), p. 54.

¹¹⁷ Spanish Data Protection Authority (2010), p. 54.

¹¹⁸ Information provided by Spanish Data Protection Authority.

¹¹⁹ Spain, Autonomous Community of Madrid (*Comunidad Autónoma de Madrid*) (2001), Madrid Data Protection Act, Autonomous Community Act No 8 of 13 July 2001 (*Ley 8/2001, de 13 de Julio, de Protección de Datos de Carácter Personal en la Comunidad de Madrid*) Art. 15 e)

¹²⁰ Spain, Autonomous Community of Madrid (*Comunidad Autónoma de Madrid*) (2003), Decree 67/2003 Regulations implementing the functions of the Data Protection Agency of Madrid protection of rights and control files of personal data (*Decreto 67/2003, de 22 de mayo por el que se aprueba el Reglamento de desarrollo de las funciones de la Agencia de Protección de Datos de la Comunidad de Madrid de tutela de derechos y de control de ficheros de datos de carácter personal*). Art. 6.2.

Protección de Datos de la Comunidad de Madrid de tutela de derechos y de control de ficheros de datos de carácter personal).

- Type of procedure:

Data Protection Authority.

This is a procedure under a regional data protection authority, and protects information, access, rectification, cancellation and objection to personal data in relation to regional and local public files in Madrid Autonomous Community.¹²¹

- Possibilities of appeal:

The resolution of Madrid Data Protection Authority puts an end to the administrative procedure. Nevertheless, the applicant may present a discretionary appeal in administrative instance within one month from the notification of the resolution, or directly a judiciary appeal in 2nd instance, within two months from the notification.¹²²

- Burden of proof:

The complainant must prove a violation of the rights of access, rectification, cancellation or objection to data in public files in Madrid Autonomous Community.

- Available mechanism to lower the burden of proof:

A mechanism to lower the burden of proof is not available.

- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own?

The applicant can initiate/be active in the procedure on his/her own.¹²³

- Is there free legal advice/representation available from a public body (please specify the public body)?

There is not free legal advice or representation available from a public body.

- Is there locus stand for DP authorities, civil society organisations and associations to initiate/be active in procedure?

There is not a locus stand for civil society organisations and associations to initiate or be active in procedure.¹²⁴

- Cost of procedure:

The procedure is free of charges. There are not data about the cost of the procedure.¹²⁵

- Average duration of procedure:

The procedure must be resolved in a maximum of 6 months and when the maximum length of time is exceeded and there is not a specific resolution, the applicant can consider its request estimated by a positive administrative silence, according to Article 6.4 of Madrid Data Protection Implementing Decree, Madrid Autonomous Community Decree No 67 of 22 May 2003 (*Decreto 67/2003, de 22 de mayo por el que se aprueba el Reglamento de desarrollo de las funciones de la Agencia de Protección de Datos de la Comunidad de Madrid de tutela de derechos y de control de ficheros de datos de carácter personal*).

However, the average duration of a procedure, including previous actions (12 months), is 18 months.¹²⁶

- Outcomes for 2009, 2010, 2011:

Data Protection Authority of Community of Madrid resolved a number of information, access, rectification, cancellation and objection to personal data rights protection cases in relation to regional and local public files in Madrid: 101 cases in 2009,¹²⁷ with 44 positive resolutions.¹²⁸ In

¹²¹ Spain, Autonomous Community of Madrid (*Comunidad Autónoma de Madrid*) (2001), Arts. 2 and 15 a)

¹²² Spain, Autonomous Community of Madrid (*Comunidad Autónoma de Madrid*) (2003), Art. 6.3

¹²³ Ibid. Art. 3.1

¹²⁴ Spain (1999), Art. 18.1.

¹²⁵ Data Protection Authority of Community of Madrid (2009) and (2010).

¹²⁶ Information provided by Data Protection Authority of Community of Madrid.

¹²⁷ Data Protection Authority of Community of Madrid (2009), p. 19.

2010, it resolved 58 cases,¹²⁹ with 13 positive resolutions.¹³⁰ Finally, it resolved 107 cases in 2011 (123 initiated in 2010, and 94 in 2011)¹³¹ with 14 positive resolutions.¹³²

8. Control function in relation to public files in Autonomous Community of Madrid.

- Range of possible outcomes:

Data Protection Authority of Community of Madrid can declare an infringement of the data protection legislation by a public administration responsible of the personal data file.

- Legal basis:

This mechanism is regulated by Article 19 of Madrid Data Protection Act, Autonomous Community Act No 8 of 13 July 2001 (*Ley 8/2001, de 13 de Julio, de Protección de Datos de Carácter Personal en la Comunidad de Madrid*), and Title III of Madrid Data Protection Implementing Decree, Madrid Autonomous Community Decree No 67 of 22 May 2003 (*Decreto 67/2003, de 22 de mayo por el que se aprueba el Reglamento de desarrollo de las funciones de la Agencia de Protección de Datos de la Comunidad de Madrid de tutela de derechos y de control de ficheros de datos de carácter personal*).

- Type of procedure:

Data Protection Authority.

This is a procedure under a regional data protection authority that allows Data Protection Authority of Community of Madrid to supervise regional and local public files in Autonomous Community of Madrid in order to guarantee the compliance with data protection legislation.

- Possibilities of appeal:

The resolution puts a end to the administrative procedure according. Nevertheless, it is possible to present a discretionary appeal in administrative instance within one month from the notification of the resolution, or directly a judiciary appeal in 2nd instance, within two months from the notification.¹³³

- Burden of proof:

It is necessary a violation of data protection legislation.

- Available mechanism to lower the burden of proof:

A mechanism to lower the burden of proof is not available.

- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own?

The Data Protection Authority can initiate the procedure ex officio, by request of an administrative entity or by complaint. In this sense, the complainant can initiate/be active in the procedure on his/her own.¹³⁴

- Is there free legal advice/representation available from a public body (please specify the public body)?

There is not free legal advice or representation available from a public body.

- Is there locus stand for DP authorities, civil society organisations and associations to initiate/be active in procedure?

¹²⁸ Data Protection Authority of Community of Madrid, Protection rights function index, available at: www.madrid.org/cs/Satellite?cid=1247227049247&language=es&pagename=PortalAPDCM%2FPPage%2FPAPD_listado#a1247227048779.

¹²⁹ Data Protection Authority of Community of Madrid (2010), p. 22.

¹³⁰ Data Protection Authority of Community of Madrid, Protection rights function index, www.madrid.org/cs/Satellite?cid=1247227049247&language=es&pagename=PortalAPDCM%2FPPage%2FPAPD_listado#a1247227048779.

¹³¹ Information provided by Data Protection Authority of Community of Madrid.

¹³² Data Protection Authority of Community of Madrid, Protection rights function index, available at: www.madrid.org/cs/Satellite?cid=1247227049247&language=es&pagename=PortalAPDCM%2FPPage%2FPAPD_listado#a1247227048779.

¹³³ Spain (1998), Art. 46.1.

¹³⁴ Spain, Autonomous Community of Madrid (*Comunidad Autónoma de Madrid*) (2003), Art. 7.1.

There is not a locus stand for civil society organisations and associations to initiate or be active in procedure. But Data Protection Authority can initiate the procedure ex officio or by request of an administrative entity.

- Cost of procedure:

The procedure is free of charges. There are not dates about the cost of the procedure.¹³⁵

- Average duration of procedure:

The procedure must be resolved in a maximum of 6 months, but the average duration of the procedure, including previous actions (12 months), is 18 months.¹³⁶

- Outcomes for 2009, 2010, 2011:

Data Protection Authority of Community of Madrid resolved 215 cases in 2009¹³⁷, and in 31 cases of them the Authority declared the infringement of Data Protection Act.¹³⁸ In 2010, it resolved 118 cases,¹³⁹ and declared the infringement of Data Protection Act in 4 of them.¹⁴⁰ In 2011 the Data Authority resolved 150 cases (60 initiated in 2010, and 90 initiated in 2011),¹⁴¹ and declared the infringement of Data Protection Act in 5 cases.¹⁴²

9. Access, rectification, cancellation and objection rights protection in Catalonia.

- Range of possible outcomes:

Catalonia Data Protection Authority can require to make effective the exercise of access, rectification, cancellation or objection to data in a fixed term.¹⁴³

- Legal basis:

It is regulated by chapter 4 of Catalan Data Protection Authority Act, act No. 32 of 1 October 2010 (*Ley 32/2010, de 1 de octubre, de la Autoridad Catalana de Protección de Datos*)¹⁴⁴ that replaced Act No. 5 of 19 April 2002 (*Ley 5/2002, de 19 de abril, de la Agencia Catalana de Protección de Datos*) in force until 28 of October 2010.¹⁴⁵

- Type of procedure:

Data Protection Authority.

This mechanism protects information, access, rectification, cancellation and objection to personal data in relation to regional and local public entities, and in relation to private entities with a public service or a local or regional link in Catalonia.

- Possibilities of appeal:

This is a procedure under a regional data protection authority, and its resolution puts an end to the administrative procedure. In this sense, the applicant may present a discretionary appeal in

¹³⁵ Data Protection Authority of Community of Madrid (2009) and (2010). And information provided by Data Protection Authority of Community of Madrid.

¹³⁶ Information provided by Data Protection Authority of Community of Madrid.

¹³⁷ Data Protection Authority of Community of Madrid (2009), p. 19.

¹³⁸ Data Protection Authority of Community of Madrid, Control function index, www.madrid.org/cs/Satellite?cid=1247227049247&language=es&pagename=PortalAPDCM%2FPPage%2FPAPD_listado#a1247227048779.

¹³⁹ Data Protection Authority of Community of Madrid (2010), p. 22.

¹⁴⁰ Data Protection Authority of Community of Madrid, Control function index, available at: www.madrid.org/cs/Satellite?cid=1247227049247&language=es&pagename=PortalAPDCM%2FPPage%2FPAPD_listado#a1247227048779.

¹⁴¹ Information provided by Data Protection Authority of Community of Madrid.

¹⁴² Data Protection Authority of Community of Madrid, Control function index, available at: www.madrid.org/cs/Satellite?cid=1247227049247&language=es&pagename=PortalAPDCM%2FPPage%2FPAPD_listado#a1247227048779.

¹⁴³ Spain, Autonomous Community of Catalonia (*Comunidad Autónoma de Cataluña*) (2010), Act 32/2010 of Catalan Data Protection Authority (*Ley 32/2010, de 1 de octubre, de la Autoridad Catalana de Protección de Datos*), Art. 16.3.

¹⁴⁴ *Ibid.*

¹⁴⁵ Spain, Autonomous Community of Catalonia (*Comunidad Autónoma de Cataluña*) (2002), Act 5/2002 of Catalan Data Protection Authority (*Ley 5/2002, de 19 de abril, de la Agencia Catalana de Protección de Datos*). BOE 14 May 2002.

administrative instance within one month from the notification of the resolution, or directly a judiciary appeal in 2nd instance, within two months from the notification.¹⁴⁶

- Burden of proof:

The complainant must prove a violation of the rights of access, rectification, cancellation or objection to data in public files in Catalonia.

- Available mechanism to lower the burden of proof:

A mechanism to lower the burden of proof is not available.

- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own?

The applicant can initiate/be active in the procedure on his/her own.

- Is there free legal advice/representation available from a public body (please specify the public body)?

There is not free legal advice or representation available from a public body.

- Is there locus stand for DP authorities, civil society organisations and associations to initiate/be active in procedure?

There is not a locus stand for civil society organisations and associations to initiate or be active in procedure.

- Cost of procedure:

The procedure is free of charges. There are not data about the cost of the procedure.¹⁴⁷

- Average duration of procedure:

There are not data about the average duration of the procedure.¹⁴⁸ Nevertheless, the procedure must be resolved in a maximum of 6 months and when the maximum length of time is exceeded and there is not a specific resolution, the applicant can consider estimated its request by a positive administrative silence, according to Art. 16.2 of Catalan Data Protection Authority Act, act No. 32 of 1 October 2010 (*Ley 32/2010, de 1 de octubre, de la Autoridad Catalana de Protección de Datos*)

- Outcomes for 2009, 2010, 2011:

Catalan Data Protection Authority resolved several accesses, rectification, cancellation and objection to personal data rights protection cases in relation to regional and local public files in Catalonia: 25 in 2009,¹⁴⁹ 51 in 2010¹⁵⁰, and 37 in 2011¹⁵¹.

10. Control function in Catalonia

- Range of possible outcomes:

The Catalan Data Authority can declare an infringement of data protection law by a public administration responsible of the personal data file, and can impose a fine in case of private files according to data protection legislation.¹⁵² In this sense, the fine can be from €900 up to €600.000.¹⁵³ Finally, in cases of very serious infringements the Authority can immobilize the data.¹⁵⁴

- Legal basis:

This mechanism is regulated by Chapter 4 of Catalan Data Protection Authority, Act No. 32 of 1 October 2010 (*Ley 32/2010, de 1 de octubre, de la Autoridad Catalana de Protección de Datos*)

¹⁴⁶ Spain (1998), Art. 46.1.

¹⁴⁷ Catalan Data Protection Authority (2009) and (2010).

¹⁴⁸ Catalan Data Protection Authority (2009) and (2010).

¹⁴⁹ Catalonia Data Protection Authority (2010), p. 61.

¹⁵⁰ Catalonia Data Protection Authority (2010).

¹⁵¹ Information provided by Catalonia Data Protection Authority.

¹⁵² Spain, Autonomous Community of Catalonia (*Comunidad Autónoma de Cataluña*) (2010), Art. 21

¹⁵³ Spain (1999), Art. 45.

¹⁵⁴ Spain, Autonomous Community of Catalonia (*Comunidad Autónoma de Cataluña*) (2010), Art. 25.

replacing Catalan Data Protection Authority, No. 5 of 19 April 2002 (*Ley 5/2002, de 19 de abril, de la Agencia Catalana de Protección de Datos*) in force until 28 of October 2010.

- Type of procedure:

Data Protection Authority

This control function is a mechanism that allows Catalan Data Protection Authority to supervise regional, local entities, and private entities with a public service or a public link, according to articles 3, 18 and 19 of Data Protection Authority Act, act No. 32 of 1 October 2010 (*Ley 32/2010, de 1 de octubre, de la Autoridad Catalana de Protección de Datos*).

- Possibilities of appeal:

This is a procedure under a regional data protection authority, and its resolution puts an end to the administrative procedure. Nevertheless, it is possible to present a discretionary appeal in administrative instance within one month from the notification of the resolution, or directly a judiciary appeal in 2nd instance, within two months from the notification.¹⁵⁵

- Burden of proof:

An infringement of data protection law.

- Available mechanism to lower the burden of proof:

A mechanism to lower the burden of proof is not available.

- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own?

The Catalan Data Protection Authority can initiate the procedure ex officio, or by complaint.¹⁵⁶

The complainant can initiate/be active in the procedure on his/her own.

- Is there free legal advice/representation available from a public body (please specify the public body)?

There is not free legal advice or representation available from a public body.

- Is there locus stand for DP authorities, civil society organisations and associations to initiate/be active in procedure?

There is not a locus stand for civil society organisations and associations to initiate or be active in procedure.

- Cost of procedure:

The procedure is free of charges. There are not data available about the cost of the procedure.¹⁵⁷

- Average duration of procedure:

There are not data available about the average duration of the procedure.¹⁵⁸

- Outcomes for 2009, 2010, 2011:

Catalan Data Protection Authority resolved 33 cases in 2009, 32 with a declaration of infringement of Data Protection Act by a public administration, and 1 with a fine to a private entity.¹⁵⁹ In 2010, 49 cases, 43 with a declaration of infringement, and 6 with fine.¹⁶⁰ Finally, in 2011 the Catalan Authority resolved 44 cases.¹⁶¹

11. Access, rectification, cancellation and objection rights protection in Basque Country.

- Range of possible outcomes:

¹⁵⁵ Spain (1998), Art. 46.1.

¹⁵⁶ Spain, Autonomous Community of Catalonia (*Comunidad Autónoma de Cataluña*) (2010), Art. 22.

¹⁵⁷ Information provided by Catalan Data Protection Authority.

¹⁵⁸ Information provided by Catalan Data Protection Authority.

¹⁵⁹ Catalan Data Protection Authority (2009), p. 89.

¹⁶⁰ Catalan Data Protection Authority (2010), p. 65.

¹⁶¹ Information provided by Catalan Data Protection Authority.

The Basque Data Protection Authority can require to make effective the exercise of access, rectification, cancellation, objection to data, or blocking of data at a specific time.¹⁶²

- Legal basis:

The mechanism is regulated by Title III Basque Country Data Files and Protection Authority, Act No. 2 of 25 February 2004 (*Ley 2/2004, de 25 de febrero, de Ficheros de Datos de Carácter Personal de Titularidad Pública y de Creación de la Agencia Vasca de Protección de Datos*)¹⁶³, and Chapter II and III Basque Country Implementing Decree No. 308 of 18 October 2005 (*Decreto 308/2005, de 18 de octubre, por el que se desarrolla la Ley 2/2004, de 25 de febrero*).¹⁶⁴

- Type of procedure:

Data Protection Authority.

This mechanism protects information, access, rectification, cancellation and objection to personal data in relation to files created or managed by public entities in the Basque Country.¹⁶⁵

- Possibilities of appeal:

This is a procedure under a regional data protection authority, and its resolution puts an end to the administrative procedure. In this sense, the applicant may present a discretionary appeal in administrative instance or directly a judiciary appeal in 2nd instance.¹⁶⁶

- Burden of proof:

The complainant must prove a violation of the rights of access, rectification, cancellation or objection to data in public files in Basque Country.¹⁶⁷

- Available mechanism to lower the burden of proof:

A mechanism to lower the burden of proof is not available.¹⁶⁸

- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own?

The applicant can initiate/be active in the procedure on his/her own.

- Is there free legal advice/representation available from a public body (please specify the public body)?

There is not free legal advice or representation available from a public body.

- Is there locus stand for DP authorities, civil society organisations and associations to initiate/be active in procedure?

There is not a locus stand for civil society organisations and associations to initiate or be active in procedure.¹⁶⁹

- Cost of procedure:

The procedure is free of charges. There are not data about the cost of the procedure.¹⁷⁰

- Average duration of procedure:

There are not data about the average duration of the procedure.¹⁷¹

- Outcomes for 2009, 2010, 2011:

¹⁶² Spain, Autonomous Community of Basque Country (*Comunidad Autónoma del País Vasco*) (2005), Decree 308/2005 Implementing the Act 2/2004 (*Decreto 308/2005, de 18 de octubre, por el que se desarrolla la Ley 2/2004, de 25 de febrero*). Art. 12.

¹⁶³ Spain, Autonomous Community of Basque Country (*Comunidad Autónoma del País Vasco*) (2004), Act 2/2004 of Files for Personal Data of Public Ownership and Establishment of the Basque Country Data Protection (*Ley 2/2004, de 25 de febrero, de Ficheros de Datos de Carácter Personal de Titularidad Pública y de Creación de la Agencia Vasca de Protección de Datos*), (BOE 19 November 2011)

¹⁶⁴ Spain, Autonomous Community of Basque Country (*Comunidad Autónoma del País Vasco*) (2005).

¹⁶⁵ Spain, Autonomous Community of Basque Country (*Comunidad Autónoma del País Vasco*) (2004), Arts. 1, 2.1 and 17.1 and Spain, Autonomous Community of Basque Country (*Comunidad Autónoma del País Vasco*) (2005). Art. 1.

¹⁶⁶ Spain, Autonomous Community of Basque Country (*Comunidad Autónoma del País Vasco*) (2005), Art. 11.6.

¹⁶⁷ *Ibid.* Art. 11.4.

¹⁶⁸ *Ibid.* Art. 11.4.

¹⁶⁹ *Ibid.* Art. 11.2

¹⁷⁰ Basque Country Data Protection Authority (2009), (2010), and (2011).

¹⁷¹ Basque Country Data Protection Authority (2009), (2010), and (2011).

The Basque Data Protection Authority resolved 18 cases in 2009,¹⁷² 22 in 2010,¹⁷³ and 10 in 2011.¹⁷⁴

12. Control function in Basque Country

- Range of possible outcomes:

The Basque Country Data Protection Authority can use this mechanism to control files created or managed by public entities in the Basque Country¹⁷⁵, and to order a public regional or local public entity to correct the effects of the infringement;¹⁷⁶ resolve a fine from €601,01 to €601.012,1 in case of a private entity;¹⁷⁷ and finally order the block of data in cases of very serious infringement.¹⁷⁸

- Legal basis:

This mechanism is regulated by Title III Basque Country Data Files and Protection Authority, Act No. 2 of 25 February 2004 (*Ley 2/2004, de 25 de febrero, de Ficheros de Datos de Carácter Personal de Titularidad Pública y de Creación de la Agencia Vasca de Protección de Datos*), and Chapter III-IV of Basque Country Implementing Decree No. 308 of 18 October 2005 (*Decreto 308/2005, de 18 de octubre, por el que se desarrolla la Ley 2/2004, de 25 de febrero*).

- Type of procedure:

Data Protection Authority.

- Possibilities of appeal:

This is a procedure under a regional data protection authority, and its resolution puts an end to the administrative procedure. Nevertheless, it is possible to present a discretionary appeal in administrative instance within one month from the notification of the resolution, or directly a judiciary appeal in 2nd instance, within two months from the notification.¹⁷⁹

- Burden of proof:

It is necessary to prove an infringement of the Data Protection Act, as provided by Article 15.2 of Basque Country Implementing Decree No. 308 of 18 October 2005 (*Decreto 308/2005, de 18 de octubre, por el que se desarrolla la Ley 2/2004, de 25 de febrero*).

- Available mechanism to lower the burden of proof:

A mechanism to lower the burden of proof is not available.

- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own?

The Basque Country Data Protection Authority can initiate the procedure ex officio, or by request of a public entity, or by complaint according to article 14 of Basque Country Implementing Decree No. 308 of 18 October 2005 (*Decreto 308/2005, de 18 de octubre, por el que se desarrolla la Ley 2/2004, de 25 de febrero*). In this sense the complainant can initiate the procedure on his/her own.

- Is there free legal advice/representation available from a public body (please specify the public body)?

There is not free legal advice or representation available from a public body.

¹⁷² Basque Country Data Protection Authority (2009), p. 15.

¹⁷³ Basque Country Data Protection Authority (2010), p. 16.

¹⁷⁴ Basque Country Data Protection Authority (2011), p. 15.

¹⁷⁵ Spain, Autonomous Community of Basque Country (*Comunidad Autónoma del País Vasco*) (2004), Arts. 19 in relation to art. 2.1 and art. 1 of Spain, Autonomous Community of Basque Country (*Comunidad Autónoma del País Vasco*) (2005).

¹⁷⁶ Spain, Autonomous Community of Basque Country (*Comunidad Autónoma del País Vasco*) (2004), Arts. 19 and 24.

¹⁷⁷ *Ibid.* Art. 23.

¹⁷⁸ *Ibid.* Art. 25 and art. 12. 4 Autonomous Community of Basque Country (*Comunidad Autónoma del País Vasco*) (2005)

¹⁷⁹ Spain (1998), Art. 46.1.

- Is there locus stand for DP authorities, civil society organisations and associations to initiate/be active in procedure?

There is not a locus stand for civil society organisations and associations to initiate or be active in procedure.

- Burden of proof:

It is necessary to prove an infringement of the Data Protection Act, as provided by Article 15.2 of the Decree cited above.

- Available mechanism to lower the burden of proof:

A mechanism to lower the burden of proof is not available.

- Cost of procedure:

The procedure is free of charges. There are not data available about the cost of the procedure.¹⁸⁰

- Average duration of procedure:

There are not data available about the average duration of the procedure.¹⁸¹

- Outcomes for 2009, 2010, 2011:

The Basque Country Data Protection Authority resolved 18 cases in 2009, 16 infringement procedures and 2 fine procedures;¹⁸² and 9 infringement procedures in 2010.¹⁸³ Finally, it resolved 17 infringement procedures in 2011.¹⁸⁴

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¹⁸⁰ Basque Country Data Protection Authority (2009), (2010) and (2011).

¹⁸¹ Basque Country Data Protection Authority (2009), (2010) and (2011).

¹⁸² Basque Country Data Protection Authority (2009), p. 15.

¹⁸³ Basque Country Data Protection Authority (2010), p. 16.

¹⁸⁴ Basque Country Data Protection Authority (2011), p. 15.

eid=1252308394180&pagename=PortalAPDCM%2FPAPD_Generico_FA%2FPAPD_fichaPublicacion&vest=1252308394180.

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