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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	Total number of times this procedure was initiated in 2010	Total number of times this procedure was initiated in 2011
1	Declaration of a violation of rights; specific orders aimed at remedying the violation	Data protection authority	102 ¹	139 ²	105 ³
2	Injunction (temporary ruling prohibiting the processing of data)	Data protection authority	(2) ⁴	(0) ⁵	(4) ⁶
3 ⁷	Criminal liability	Municipal	3 ⁸	2 ⁹	4 ¹⁰

¹) Croatia, Personal Data Protection Agency (2010); Croatia, Personal Data Protection Agency (2012c).

²) Croatia, Personal Data Protection Agency (2012a; Croatia, Personal Data Protection Agency (2012c).

³) Croatia, Personal Data Protection Agency (2012b); Croatia, Personal Data Protection Agency (2012c).

⁴ Sources of information regarding the use of this redress mechanism: Croatia, Personal Data Protection Agency (2012c). By its legal nature, this redress mechanism is a supplementary request to the mechanism described above (n. 1). DPA's registry does not contain information regarding the total number of times this supplementary request has been submitted. Data in the table above represent the total number of times the DPA has granted the request in question.

⁵ Sources of information regarding the use of this redress mechanism: Croatia, Personal Data Protection Agency (2012c). By its legal nature, this redress mechanism is a supplementary request to the mechanism described above (n. 1). DPA's registry does not contain information regarding the total number of times this supplementary request has been submitted. Data in the table above represent the total number of times the DPA has granted the request in question.

⁶ Sources of information regarding the use of this redress mechanism: Croatia, Personal Data Protection Agency (2012c). By its legal nature, this redress mechanism is a supplementary request to the mechanism described above (n. 1). DPA's registry does not contain information regarding the total number of times this supplementary request has been submitted. Data in the table above represent the total number of times the DPA has granted the request in question.

⁷ Sources of information regarding the use of this redress mechanism:

(i) Croatian Law Centre (2012). Written questionnaires with requests for information regarding the use of this legal mechanism were sent to all courts with jurisdiction in the first instance (65). Replies were received from 60 courts who reported a total of eight cases.

(ii) search in available databases of case law: Croatia, Supreme Court and Ius-Info. No additional cases were found in these databases.

⁸ Croatian Law Centre (2012). Cases reported by Municipal criminal court in Zagreb (2) and Municipal court in Jastrebarsko.

⁹ Croatian Law Centre (2012). Cases reported by Municipal criminal court in Zagreb and Municipal court in Split.

¹⁰ Croatian Law Centre (2012). Cases reported by Municipal criminal court in Zagreb (2) and Municipal courts in Šibenik and Zadar.

		courts			
4 ¹¹	Compensation of damages	Municipal courts	0 ¹²	0 ¹³	0 ¹⁴
5	Misdemeanour sanctions	Misdemeanour courts	11 ¹⁵	7 ¹⁶	2 ¹⁷

Detailed information per mapped redress mechanism

1. Declaration of a violation of rights; specific orders with the aim of remedying the violation

- **General:** Any persons who believe that their rights protected by the Personal Data Protection Act (hereinafter: PDPA)¹⁸ have been violated can submit a *request to establish (declare) a violation of rights* to the Data Protection Authority (hereinafter: DPA).¹⁹ The DPA shall issue a decision regarding the request.
- **Range of possible outcomes:** When it finds a violation of rights has occurred, the DPA issues a positive decision, which consists of: (i) a declaration that the data subject's rights have been violated, and (ii) an order to the violator to undertake specific measure(s) to put an end to the violation of rights. The exact content and scope of these measures correspond to the nature of the violation and include: the prohibition of the collection, processing and use of personal data; ordering the erasure of the data collected without an appropriate legal basis; ordering the controller to give access to data and other information related to it; prohibiting the transfer of data to third countries, etc.
- **Legal basis:** Article 24 of the PDPA.
- **Type of procedure:** Administrative procedure / Data Protection Authority.
- **Possibilities of appeal:** A decision of the DPA is an administrative act against which an appeal is not allowed. However, it is possible to initiate an administrative dispute²⁰ against such an act.
- **Burden of proof:** There are no specific rules in the PDPA. According to the instructions available on the DPA's website, it is enough for data subjects to make an initial claim that their rights have been violated and explain the circumstances of the alleged violation of rights.²¹ Following such a request, the DPA uses its

¹¹ Sources of information regarding the use of this redress mechanism:

(i) Croatian Law Centre (2012). Written questionnaires with requests for information regarding the use of this legal mechanism were sent to all courts with jurisdiction in the first instance (65). Replies were received from 60 courts who did not report any case.

(ii) search in available databases of case law: Croatia, Supreme Court and Ius-Info. No additional cases were found in these databases.

¹² Croatian Law Centre (2012).

¹³ Croatian Law Centre (2012).

¹⁴ Croatian Law Centre (2012).

¹⁵ Croatian Law Centre (2012).

¹⁶ Croatian Law Centre (2012).

¹⁷ Croatian Law Centre (2012).

¹⁸ Croatia (2003).

¹⁹ Croatia, Personal Data Protection Agency.

²⁰ An administrative dispute is a process of judicial review of administrative decisions made by state bodies and organisations vested with public powers.

²¹ Croatia, Personal Data Protection Agency (2012e).

investigatory powers to establish the relevant facts and issues a decision. An analysis of the DPA's publicly available decisions²² also supports the conclusion that complainants bear no specific burden of proof.

- **Available mechanism to lower the burden of proof:** Not applicable, since, as explained above, complainants do not bear any specific burden of proof.
- **Requirement of legal representation:** Complainants can initiate and be active in a procedure on their own.²³
- **Is there free legal advice/representation available from a public body (please specify the public body):** No. However, citizens are able to obtain some assistance through other means. In that regard, it is worth mentioning that the DPA routinely provides legal advice to citizens regarding their right to data protection in general. In addition, it is possible to obtain legal advice free of charge through the system of free legal aid.
- **Is there locus standi for DP authorities, civil society organizations and associations to initiate/be active in the procedure?** There are no specific rules in the PDPA. In practice, the DPA allows legal entities other than data subjects to initiate this procedure. In 2011, approximately 15% of requests were submitted by associations of citizens, trade unions and the office of the Ombudswoman for Children.²⁴
- **Cost of procedure: please provide information on the average cost of the procedure:** Free of charge.²⁵
- **Average duration of procedure:** Precise information not available; according to the DPA's statements, in the vast majority of cases a decision is reached within 60 days from the date when the opposing party submits its statement regarding the alleged violation of the petitioner's rights.²⁶
- **Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011:** In the course of the period covered by the study, the DPA issued 346 decisions in relation to a request regarding the protection of almost all the subjective rights provided by the PDPA. In this regard, DPA has:²⁷
 - prohibited the unauthorised use of personal data;
 - prohibited the unlawful transfer of personal data to third parties;
 - ordered controllers to implement appropriate technical and organisational measures to maintain security and unauthorised use of personal data;
 - prohibited the collection of personal data deemed excessive in relation to the purpose for which the data are collected;
 - ordered controllers to delete personal data published on web pages.

Out of a total number of requests received (346), the DPA has issued 161 binding decisions. In 133 cases where, due to procedural or other reasons, it was not able

²² Croatia, Personal Data Protection Agency (2012f). Excerpts of others decisions can be found in the DPA's annual reports: Croatia, Personal Data Protection Agency (2010), Croatia, Personal Data Protection Agency (2012a), Croatia, Personal Data Protection Agency (2012b).

²³ Croatia (2003), Article 24.

²⁴ Croatia, Personal Data Protection Agency (2012b).

²⁵ Croatia, Personal Data Protection Agency (2012d). Confirmed by the DPA on our specific request.

²⁶ Croatia, Personal Data Protection Agency (2012c).

²⁷ Croatia, Personal Data Protection Agency (2012d), Croatia, Personal Data Protection Agency (2010), Croatia, Personal Data Protection Agency (2012a) and Croatia, Personal Data Protection Agency (2012b).

to reach a formal decision, the DPA has nevertheless issued its opinions and recommendations to the parties (usually to the collector of data).²⁸

2. Temporary ruling prohibiting the processing of personal data

- **General:** This is a supplementary request which can be used in combination with a primary request to establish a violation of rights.
- **Range of possible outcomes:** A temporary measure prohibiting the processing of personal data until the procedure regarding the request to establish a violation of rights is finalised.
- **Legal basis:** Article 25 of the PDPA.
- **Type of procedure:** Administrative procedure / Data Protection Authority.
- **Possibilities of appeal:** An appeal is not allowed, but it is possible to initiate an administrative dispute.²⁹
- **Burden of proof:** There are no specific rules in the PDPA. The claimant bears no specific burden of proof and the DPA enjoys significant discretionary powers when assessing the justifiability of the request.³⁰
- **Available mechanism to lower the burden of proof:** No.
- **Requirement of legal representation:** No (the same as for the primary request to establish a violation of rights).
- **Is there free legal advice/representation available from a public body (please specify the public body):** No, except through the system of free legal aid (the same as for the primary request to establish a violation of rights).
- **Is there locus standi for DP authorities, civil society organizations and associations to initiate/be active in the procedure?** The DPA can issue a temporary ruling prohibiting the processing of data on its own motion.
- **Cost of procedure:** Free of charge (the same as with the primary request).
- **Average duration of procedure:** Precise information not available in the DPA registry; according to DPA statements, cases of this kind are given priority and are usually solved within 30 days.
- **Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011:** Six requests granted, specific information not available.

3. Criminal liability for unauthorised use of personal data

- **General:** Article 133 of the Criminal Code (entitled “Unauthorized Use of Personal Data”)³¹ provides for criminal sanctions against a person who “without the consent of citizens and contrary to the rules stipulated by the law collects, processes or uses personal data, or uses such data contrary to the statutory purpose of their collection”.
- **Range of possible outcomes:** A fine or imprisonment of up to six months.

²⁸ Croatia, Personal Data Protection Agency (2012c).

²⁹ An administrative dispute is a process of judicial review of administrative decisions made by state bodies and organisations vested with public powers.

³⁰ Croatia, Personal Data Protection Agency (2012c).

³¹ Croatia (1997).

- **Legal basis:** Article 133 of the Criminal Code.³²
- **Type of procedure:** Criminal prosecution.
- **Possibilities of appeal:** Appeal in the second instance.
- **Burden of proof:** In accordance with the general rules of criminal procedure, the burden of proof lies with the prosecutor.
- **Available mechanism to lower the burden of proof:** No.
- **Requirement of legal representation:** Criminal prosecutions are conducted by the State Attorney's Office. According to Article 133(2) of the Criminal code³³, the State Attorney's Office shall institute criminal proceedings in the case of "Unauthorized Use of Personal Data" only following a motion.
- **Is there free legal advice/representation available from a public body (please specify the public body):** It is possible to obtain legal advice free of charge through the system of free legal aid.
- **Is there locus standi for DP authorities, civil society organizations and associations to initiate/be active in the procedure?** No.
- **Cost of procedure:** Not applicable (prosecution is conducted by the State Attorney's Office).
- **Average duration of procedure:** 13.5 months.³⁴
- **Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011:** In most of the cases reported, the procedure is still pending. In only two cases (of a total of nine) a judgement in the first instance was issued. We have been able to gain access to one of those judgements, which concerned a person who abused others' personal data in an attempt to misidentify himself to the police, for which he was found guilty and convicted to a fine in the amount of HRK 8,950 (approximately EUR 1,185).

4. Compensation of damages

- **General:** According to Article 26 of the PDPA³⁵, the controller is liable for damage caused by the unlawful processing of personal data, which includes damage resulting from the unauthorised use or unauthorised transfer of personal data to third parties. In addition, Article 26 prescribes that the controller's liability should be judged in accordance with the general rules for compensation of damage, and that the jurisdiction for such claims lies with the courts of general jurisdiction.
- **Range of possible outcomes:** Redress for a violation of the right to protection of personal data can consist of the publication of a judgment establishing such a violation at the expense of the defendant, compensation of material damage and the award of just pecuniary compensation for intangible damage.
- **Legal basis:** Article 26 of the PDPA³⁶, in conjunction with Articles 8, 19, 20, 1045, 1048, 1099 and 1100 of the Law on Obligations³⁷.
- **Type of procedure:** Civil procedure.

³² Croatia (1997).

³³ Croatia (1997).

³⁴ Based on only two decisions.

³⁵ Croatia (2003).

³⁶ Croatia (2003).

³⁷ Croatia (2005).

- **Possibilities of appeal:** Appeal in the second instance.
- **Burden of proof:** Lies with the plaintiff, who has to prove (i) that the plaintiff's rights of personality have been violated; (ii) that the violation is a result of an action made by the defendant, and (iii) that the action of the defendant was unlawful.
- **Available mechanism to lower the burden of proof:** No.
- **Requirement of legal representation:** Complainants can initiate and be active in a procedure on their own.
- **Is there free legal advice/representation available from a public body (please specify the public body):** It is possible to obtain legal advice free of charge through the system of free legal aid.
- **Is there locus standi for DP authorities, civil society organizations and associations to initiate/be active in procedure?** Yes, using the procedure of intervention allowed by the rules of civil procedure. According to Article 206 of the Civil Procedure Act,³⁸ "a person who has a legal interest that one of the parties succeeds in litigation pending between other persons, may join that party. The intervener may enter the litigation during the entire course of the proceedings, up to the moment of legal effectiveness of the decision on the claim, and in the course of proceedings which are continued upon an extraordinary legal remedy".
- **Cost of procedure:** Data not available (no cases during the period covered by the study).
- **Average duration of procedure:** Data not available (no cases during the period covered by the study).
- **Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011:** Data not available (no cases during the period covered by the study).

5. Misdemeanour sanctions

- **General:** Article 36 of the PDPA prescribes a number of misdemeanour sanctions for violation of the rules contained in the PDPA. These sanctions can be applied against the controller, processor, the DPA's director, the deputy director and employees (in the case of a breach of confidentiality), as well as against responsible natural persons when the controller or processor are legal entities.
- **Range of possible outcomes:** HRK 20,000 – 40,000³⁹ for the controller, processor and the DPA's directors and employees, and HRK 5,000 – 10,000⁴⁰ for responsible natural persons.
- **Legal basis:** Article 36 PDPA⁴¹.
- **Type of procedure:** Misdemeanour.
- **Possibilities of appeal:** Possible appeal to the High Misdemeanour Court.
- **Burden of proof:** Lies with the prosecutor, who has to prove that all the elements of a misdemeanour offence are present.
- **Available mechanism to lower the burden of proof:** No.

³⁸ Croatia (1991).

³⁹ Approximately EUR 2,640 – 5,280.

⁴⁰ Approximately EUR 660 – 1,320.

⁴¹ Croatia (2003).

- **Requirement of legal representation:** Complainants can initiate and be active in a procedure on their own.
- **Is there free legal advice/representation available from a public body (please specify the public body):** No.
- **Is there locus standi for DP authorities, civil society organizations and associations to initiate/be active in procedure?** Yes. The available case law shows that the vast majority of misdemeanour procedures were initiated upon a motion of the DPA.
- **Cost of procedure: please provide information on the average cost of the procedure:** Not applicable (prosecution conducted by the DPA).
- **Average duration of procedure:** Approximately five months for procedures where a decision in the first instance has been reached, up to the date of submission of this study. However, it is to be noted that the majority of cases have been pending for more than one year.
- **Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011:** Data not available.

Table of References:

Official exact title EN	Official title (original lang.)	Full reference
Information from the survey of municipal and misdemeanour courts conducted by the CLC in preparation of this report		Croatian Law Centre (CLC) (2012) 'Information from the survey of municipal and misdemeanour courts conducted by the CLC in preparation of this report'.
Database of legal data		Ius-Info, Commercial legal database, available at: iusinfo.hr (all hyperlinks were accessed on 26 May 2012).
Personal Data Protection Act	Zakon o zaštiti osobnih podataka	Croatia (2003) Personal Data Protection Act (<i>Zakon o zaštiti osobnih podataka</i>), Official Gazette (<i>Narodne Novine</i>) Nos. 103/2003, 118/2006, 41/2008, 130/2011.
Civil Procedure Act	Zakon o parničnom postupku	Croatia (1991) Civil Procedure Act (<i>Zakon o parničnom postupku</i>), Official Gazette (<i>Narodne Novine</i>) Nos. 53/1991, 91/1992, 112/1999, 129/2000, 88/2001, 117/2003, 88/2005, 2/2007, 96/2008, 84/2008, 123/2008, 57/2011.
Criminal Code	Kazneni zakon	Croatia (1997) Criminal Code (<i>Kazneni zakon</i>), Official Gazette (<i>Narodne Novine</i>) Nos. 110/1997, 27/1998, 50/2000, 129/2000, 84/2005, 51/2001, 111/2003, 190/2003, 105/2004, 71/2006, 110/2007, 152/2008, 57/2011, 77/2011.

Law on Obligations	Zakon o obveznim odnosima	Croatia (2005) Law on Obligations (<i>Zakon o obveznim odnosima</i>), Official Gazette (<i>Narodne Novine</i>) Nos. 35/2005, 41/2008, 125/2011.
Personal Data Protection Agency	Agencija za zaštitu osobnih podataka	Croatia, Personal Data Protection Agency (DPA) (<i>Agencija za zaštitu osobnih podataka</i>), available at: www.azop.hr .
Annual report for 2009	Godišnji izvještaj za 2009. godinu	Croatia, Personal Data Protection Agency, (<i>Agencija za zaštitu osobnih podataka</i>) (2010) Annual report for 2009, available at: http://hidra.srce.hr/arhiva/8/56311/www.sabor.hr/IZVJESCE_AZOP.pdf (all links accessed on 26.05.2012).
Annual report for 2010	Godišnji izvještaj za 2010. godinu	Croatia, Personal Data Protection Agency (<i>Agencija za zaštitu osobnih podataka</i>) (2012a) Annual report for 2010 (still unpublished, provided by DPA on our request).
Annual report for 2011	Godišnji izvještaj za 2011. godinu	Croatia, Personal Data Protection Agency (<i>Agencija za zaštitu osobnih podataka</i>) (2012b) Annual report for 2011, available at: www.azop.hr/download.aspx?f=dokumenti/Clanci/Godinjeizvjeeoraduza2011.godinu.pdf .
Information provided by Personal Data Protection Agency to request for information in preparation of this report		Croatia, Personal Data Protection Agency, (<i>Agencija za zaštitu osobnih podataka</i>) (2012c) 'Information provided by Personal Data Protection Agency to request for information in preparation of this report'.
Information publicly available on DPA's web site'		Croatia, Personal Data Protection Agency, (<i>Agencija za zaštitu osobnih podataka</i>) (2012d) 'Information publicly available on DPA's web site'.
Instructions regarding request for establishing of violation of rights	Upute vezane za zahtjev za zaštitu prava	Croatia, Personal Data Protection Agency (<i>Agencija za zaštitu osobnih podataka</i>) (2012e) Instructions regarding request for establishing of violation of rights, available at: www.azop.hr/page.aspx?PageID=23 .
Decisions of the DPA		Croatia, Personal Data Protection Agency (<i>Agencija za zaštitu osobnih podataka</i>) (2012f) Decisions of the DPA, available at: www.azop.hr/page.aspx?PageID=26 .
Supreme Court's collection of case law		Croatia, Supreme Court (<i>Vrhovni sud</i>) Supreme Court's collection of case law, available at: http://sudskapraksa.vsrh.hr/supra/ .