ITALY

FRANET Contractor

Ad Hoc Information Report

Data protection: Redress mechanisms and their use

2012

COSPE – FRANET

Marialuisa Gambini

Maria Paola Mantovani

MAPPING OF REDRESS MECHANISM 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: Detailed complaints to the DP Authority under Section 141 (a), Legislative Decree June 30, 2003, n. 196 (Data Protection Code)	- informal request to the data controller to voluntarily stop processing the data; - injunction to take the necessary measures to ensure processing is in accordance with the law; - partial or complete suspension or ban of data processing; - administrative fine; - publication of the injunction.	Data Protection Authority	10 + 1923 reports and complaints not separately classified[1]	53[2]	44[3]
2: Complaint to the DP Authority under Article 141 (b), Legislative Decree June 30, 2003, n. 196	- informal request to the data controller to voluntarily stop processing the data; - injunction to take the necessary measures to ensure processing is in accordance with the law; - partial or complete suspension or ban of data processing; - administrative fine; - publication of the injunction.	Data Protection Authority	1560 + 1923 reports and complaints not separately classified[4]	3360[5]	3978[6]
3: Complaint to the DP Authority	- order to stop the unlawful behaviour; - order to take the	Data Protection Authority	360[7]	350[8]	257[9]

[1] Detailed complaints make up, on average, about 1 – 1.5% of all complaints and reports: Information supplied by the Data Protection Authority in the attached letter of April 17, 2012.

[2] Information supplied by the Data Protection Authority in the attached letter of April 17, 2012.

[3] Information supplied by the Data Protection Authority in the attached letter of April 17, 2012.

[4] Detailed complaints make up, on average, about 1 – 1.5% of all complaints and reports: Information supplied by the Data Protection Authority in the attached letter of April 17, 2012.

[5] Information supplied by the Data Protection Authority with the attached letter of April 17, 2012.

[6] Information supplied by the Data Protection Authority with the attached letter of April 17, 2012.

[7] Pizzetti (edited by), Seven years of data protection in Italy. An assessment and a view of the future, Torino, 2012, p. 174-176; Annual Report to the Parliament for the year 2009, p. 325, in www.garanteprivacy.it

[8] Pizzetti (edited by), Seven years of data protection in Italy. An assessment and a view of the future, Torino, 2012, p. 174-176; Annual Report to the Parliament for the year 2010, p. 274, in www.garanteprivacy.it

[9] Pizzetti (edited by), Seven years of data protection in Italy. An assessment and a view of the future, Torino, 2012, p. 174-176.

under Article 141 (c), Legislative Decree June 30, 2003, n. 196	necessary measures within a specified time to protect the data subject; - order to pay the cost of proceedings; - administrative fine; - publication of the injunction.				
4: Complaint before the Civil Court under Section 152, Legislative Decree June 30, 2003, n. 196	- injunction to adopt the necessary measures; - compensation for damages; - order to pay cost of judicial proceedings.	single-judge civil court	203 complaints decided + 69 complaints in opposition to provisions of the Data Protection Authority ruled on[10]	135 + 65 complaints in opposition to provisions of Data Protection Authority ruled on[11]	170[12]
5: Administrative Violations	- administrative fine; - - publication of the injunction.	Data Protection Authority	368 administrative violations[13]	424 administrative violations[14]	358 administrative violations[15]
6: Judicial Protection under Criminal Law	- conviction and sentenced a term in prison, detention or fine; - - publication of the ruling.	single-judge criminal court	43 reports to the judicial authority by the Data Protection Authority[16]; 9 decisions found in the database[17]	55 reports to the judicial authority by the Data Protection Authority[18]; 14 decisions found in the database[19]	37 reports to the judicial authority by the Data Protection Authority[20]; 31 decisions found in the database[21]

[10] Information supplied by the Data Protection Authority in the attached letter of April 17, 2012; Annual Report to the Parliament for the year 2009, p. 325, in www.garanteprivacy.it.

[11] Information supplied by the Data Protection Authority in the attached letter of April 17, 2012; Annual Report to the Parliament for the year 2010, p. 274, in www.garanteprivacy.it.

[12] Information supplied by the Data Protection Authority in the attached letter of April 17, 2012.

[13] Annual Report to the Parliament for the year 2009, p. 329, in www.garanteprivacy.it. Regarding all the procedures, 130 were initiated for not providing at all or providing inadequate information to the data subject in breach of article 13 of the Data Protection Code [section 161]; 75 for non-compliance with article 33 or 167 of the Code [section 162 (2-bis)]; 6 for failure to abide by the Data Protection Authority's provisions [section 162 (2-ter)]; 1 for violation of rules on traffic data retention [section 162-bis]; 24 for failure to notify or for incomplete notification [section 163]; 30 for failure to provide information or submit documents to the Authority [section 164]; 1 for repeated breaches by data controllers that manage databases of particular relevance or dimension [section 164-bis (2)]; 1 for violations of rules on distance communications [sections 58 and 62, Legislative Decree September 6, 2005, n. 206]

[14] Annual Report to the Parliament for the year 2010, p. 279, in www.garanteprivacy.it. regarding all procedures, 239 were initiated for not providing at all or providing inadequate information to the data subject; 124 for non-compliance with article 33 or 167 of the Code [section 162 (2-bis)]; 12 for failure to abide by the Data Protection Authority's provisions [section 162 (2-ter)]; 4 for violations of rules on traffic data retention [section 162-bis]; 20 for failure to notify or for incomplete notification [section 163]; 19 for failure to provide information or submit documents to the Authority [section 164]; 6 for repeated breaches by data controllers that manage databases of particular relevance or dimension [section 164-bis (2)]

[15] Information supplied by the Data Protection Authority with the attached letter of April 17, 2012. - 192 proceedings were initiated for not providing at all or providing inadequate information to the data subject; 100 for non-compliance with article 33 or 167 of the Code [section 162 (2-bis)]; 11 for failure to abide by the Data Protection Authority's provisions [section 162 (2-ter)]; no breaches related to traffic data retention [section 162-bis]; 11 for failure to notify or for incomplete notification [section 163]; 22 for failure to provide information or submit documents to the Authority [section 164]; 1 for repeated breaches by data controllers that manage databases of particular relevance or dimension [section 164-bis (2)]

[16] Pizzetti (edited by), Seven years of data protection in Italy. An assessment and a view of the future, Torino, 2012, p. 174-176; Annual report to the Parliament for the year 2009, p. 325, in www.garanteprivacy.it. The Data Protection Authority does not have data on criminal proceedings carried out regardless of the cases it reported because there is no obligation to keep it informed of such proceedings: see the attached letter by the Data Protection Authority of April 17, 2012.

[17] Database Italgiure Web of the Supreme Court of Cassation; Database Dejure Giuffré. This database collects all the decisions of the Supreme Court of Cassation and of the Council of State but only the most significant decisions by territorial courts.

[18] Pizzetti (edited by), Seven years of data protection in Italy. An assessment and a view of the future, Torino, 2012, p. 174-176; Annual report to the Parliament for the year 2010, p. 274, in www.garanteprivacy.it.

7: Complaints to the Ombudsman or to the Commission for Access to Administrative Documents against provisions that authorise access	- denial of access to administrative documents containing personal data; - - deferral of access to administrative documents containing personal data.	- Ombudsman for administrative acts of municipal, provincial and regional authorities; - Commission for access to administrative documents at the Office of the President of the Council of Ministers for the acts of central and national authorities.	Complaints to the Ombudsman: data not available[22]. Complaints to the Commission: 479 (figure includes also complaints against denial or deferral of access)[23]	Complaints to the Ombudsman: data not available[24]. Complaints to the Commission: 603[25]	Complaints to the Ombudsman: data not available[26]. Complaints to the Commission: data not available[27].
8: Complaints before the Regional Administrative Tribunal (TAR) against provisions that authorise access to Administrative Documents	- denial of access to administrative documents containing personal data; - - deferral of access to administrative documents containing personal data.	Regional Administrative Tribunal (TAR)	4[28]	11[29]	27[30]

DETAILED INFORMATION

Redress Mechanism and their Use – Italy

Redress Mechanism number 1: Detailed Complaint under Article 141(a), Legislative Decree June 30, 2003, n. 196 (Data Protection Code)

- **Range of possible outcomes**:
  1. succinctly reasoned response to the complainant in the case of incompetence, unfounded claim, dated fact or fact which has already exhausted its effects or in the case of an issue already considered by the Data Protection Authority[31];

---

[19] Database Italgiure Web of the Supreme Court of Cassation; Database Dejure Giuffré.
[20] Pizzetti (edited by), Seven years of data protection in Italy. An assessment and a view of the future, Torino, 2012, p. 174-176.
[21] Database Italgiure Web of the Supreme Court of Cassation; Database Dejure Giuffré.
[22] See the request sent to the Commission for the Access to Administrative Documents on May 4, 2012
[23] Annual Report to the Parliament for the year 2010, p. 73, in www.commissioneaccesso.it
[24] See the request sent to the Commission for the Access to Administrative Documents on May 4, 2012
[25] Annual Report to the Parliament for the year 2010, p. 73, in www.commissioneaccesso.it
[26] See the request sent to the Commission for the Access to Administrative Documents on May 4, 2012
[27] See the request sent to the Commission for the Access to Administrative Documents on May 4, 2012
[28] Database Dejure Giuffré
[29] Database Dejure Giuffré
[30] Database Dejure Giuffré
[31] Regulation on the internal procedures of external significance aimed at performing the tasks of the Data Protection Authority – December 14, 2007, n. 1, Section 1 (1)

2. invite the data controller to stop processing the data of own free will[32];
3. prescribe to the data controller appropriate necessary measures to bring data processing in line with the provisions in force[33];
4. block unlawful, incorrect or prejudicial data processing entirely or partly[34];
5. fine, where an administrative violation of any of those provided for under articles 161-166 of the Code is ascertained[35].

- **Legal basis**:
  - Legislative Decree 30 June 2003, n. 196, articles 141-144 (Personal Data Protection Code);
  - Regulation on the internal procedures of external relevance aimed at performing the tasks of the Data Protection Authority – 14th December 2007, n. 1, articles 8-12.
- **Type of procedure**: administrative[36] before the Data Protection Authority[37].
- **Possibilities of appeal**:
  - 2nd instance: petition under section 152 before the civil single-judge court[38];
  - 3rd instance: petition before the Court of Cassation[39].
- **Burden of proof**: there is no burden of proof. The complaint must indicate, with as many details as possible, to the facts and circumstances on which it is grounded, the infringed provisions and the remedies sought as well as information necessary for the identification of the data controller and/or processor, if available, and the complainant. The complainant shall also attach such documents as may be helpful for assessment purposes[40].
- **Available mechanism to lower the burden of proof**: as there is no burden of proof, the Authority may request the data controller and/or processor, the data subject or a third party to provide information and produce documents[41]. It may also order that data banks and filing systems be accessed and arrange other audits or investigations[42].
- **Requirement of legal representation**: Legal representation is not necessary. The complaint shall be lodged with the Authority without any particular formalities[43].
- **Is there free legal advice/representation available from a public body?** No, statutes provide for legal advice/representation only with reference to judicial proceedings[44].
- **Is there *locus standi* for DP authorities, civil society organizations and associations to initiate/be active in procedure?** Private associations are no longer allowed to start the procedure beginning from December 6, 2011. The complaint may be made by associations only in representation of individuals concerned. In this case a letter of attorney must be attached to the complaint[45]. Private associations can, however, participate in the proceeding as interested stakeholder (data controller and/or processor) through their respective representatives[46].
- **Cost of the procedure**: € 150 for office charges[47]
- **Average duration of procedure**: there are no data available[48] but according to the Data Protection Authority's Regulation of December 14, 2007, n. 1, the procedure must be concluded in 10 – 16 months[49].

---

[32] Legislative Decree June 30, 2003, n. 196, Section 143 (1) (a)
[33] Legislative Decree June 30, 2003, n. 196, Section 143 (1) (b)
[34] Legislative Decree June 30, 2003, n. 196, Section 143 (1)(c)
[35] See Redress Mechanism n. 6
[36] Figorilli, La tutela amministrativa, in Il codice del trattamento dei dati personali, edited by Cuffaro-D'Orazio-Ricciuto, 2007, Torino, 679
[37] Legislative Decree June 30, 2003, n. 196, Sections 141 and 142
[38] Legislative Decree June 30, 2003, n. 196, Section 152 (1); Legislative Decree September 1, 2011, n. 150, (Additional Provisions to the Code of Civil Procedures concerning the reduction and simplification of civil trials), Article 10; Code of Civil Procedures, articles 50-bis and 50-ter.
[39] Constitution, Section 111(7). See Report to the Parliament for the year 2003, p. 135, in: www.garanteprivacy.it
[40] Legislative Decree June 30, 2003, n. 196, Sections 142 (1) (2)
[41] Legislative Decree June 30, 2003, n. 196, Sections 150 (2) and 157; Regulation December 14, 2007, n. 1, Section 10 (3)
[42] Legislative Decree June 30, 2003, n. 196, Section 158 (1)
[43] Legislative Decree June 30, 2003, n. 196, Section 142 (2)
[44] President of the Republic's Decree, 30th May 2002, n. 115 (Consolidated text of laws and regulations on legal costs), Section 75
[45] Legislative Decree June 30, 2003, n. 196, Sections 4 (1) (b) (i), 7, 9 (2), 142 (2), and 154 (1) (a)
[46] Legislative Decree June 30, 2003, n. 196, Section 143 (1) (a)
[47] Data Protection Authority, Deliberation of January 15, 2005
[48] See the attached letter of the Data Protection Authority of April 17, 2012

- **Outcomes for 2009, 2010 and 2011**: data not available[50].

[49] Sections 9 -12, Regulation December 14, 2007, n. 1; Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Section 2 (2).

[50] See the attached letter of the Data Protection Authority of April 17, 2012

Redress Mechanism number 2: Report under article 141(b), Legislative Decree June 30, 2003, n. 196 – applies to cases of violation of protection of personal data when it is not possible to lodge a complaint due to lack of detailed information.

- **Range of possible outcomes**:
  - forwarding of the report to the competent public authority in case of incompetence[51], recording the complaint if unfounded, dated fact or fact which has already exhausted its effects or in case of an issue already considered by the Data Protection Authority[52];
  - invite the data controller to stop processing the data of own free will[53];
  - prescribe to the data controller appropriate necessary measures to bring data processing in line with the provisions in force [54];
  - block unlawful, incorrect or prejudicial data processing entirely or partly [55];
  - fine, where an administrative violation of any of those provided for under articles 161-166 of the Code is ascertained [56].
- **Legal basis**:
  - Legislative Decree June 30, 2003, n. 196, articles 141, 143 and 144.
  - Regulation on the internal procedures of external relevance aimed at performing the tasks of the Data Protection Authority – December 14, 2007, n. 1, articles 13-14.
- **Type of procedure**: administrative[57] before the Data Protection Authority[58].
- **Possibilities of appeal**:
  - 2nd instance: petition under section 152 before the civil single-judge court[59];
  - 3rd instance: petition to the Court of Cassation[60].
- **Burden of proof**: there is no burden of proof. It is sufficient to report to the DP Authority, a situation of violation or fact with sufficient details to enable the Authority to identify the data controller[61].
- **Available mechanism to lower the burden of proof**: the DP Authority may start preliminary investigations[62] and, for this purpose, request the data controller and/or processor, the data subject or a third party, to provide information and produce documents[63]. It may also order that data banks and archiving systems be accessed and further inspections carried out[64].
- **Requirement of legal representation**: there is no need for legal representation[65].
- **Is there free legal advice/representation available from a public body?** No, statutes provide for legal advice/representation only with regard to judicial proceedings[66].
- **Is there locus standi for DP authorities, civil society organizations and associations to initiate/be active in procedure?** Private associations are no longer entitled to start the procedure beginning from December 6, 2011.

---

[51] Regulation December 14, 2007, n. 1, Sections 13 (4) and 11 (1)
[52] Regulation December 14, 2007, n. 1, Sections 13 (4) and 11 (1)
[53] Legislative Decree June 30, 2003, n. 196, articles 143 (1) (a) and 144
[54] Legislative Decree June 30, 2003, n. 196, articles 143 (1) (b) and 144
[55] Legislative Decree June 30, 2003, n. 196, articles 143 (1)(c) and 144
[56] See Redress Mechanism n. 6
[57] Figorilli, La tutela amministrativa, in Il codice del trattamento dei dati personali, edited by Cuffaro-D'Orazio-Ricciuto, 2007, Torino, 679
[58] Legislative Decree June 30, 2003, n. 196, Section 141
[59] Legislative Decree June 30, 2003, n. 196, Section 152 (1); Legislative Decree September 1, 2011, n. 150, Section 10; Civil Procedure Code, Sections 50-bis and 50-ter
[60] Constitution, Article 111(7). See Report to Parliament for the year 2003, p.135, in: http://www.garanteprivacy.it/garante/navig/jsp/index.jsp
[61] Legislative Decree June 30, 2003, n. 196, Section 141 (b); Regulation December 14, 2007, n. 1, Section 13 (4)
[62] Legislative Decree June 30, 2003, n. 196, Section 144
[63] Legislative Decree June 30, 2003, n. 196, Sections 150 (2) and 157
[64] Legislative Decree June 30, 2003, n. 196, Section 158 (1)
[65] See '*Domande frequenti*', "Attività del garante", 'Segnalazione', in: www.garanteprivacy.it/garante/navig/jsp/index.jsp
[66] President of the Republic's Decree, May 30, 2002, n. 115, Section 75

The complaint may be lodged by associations only in representation of affected individuals[67]. Private associations can, however, participate in the proceeding as interested stakeholders (controller or processor of data) through their respective representatives[68].

- **Cost of procedure**: complaint is lodged free of charge[69].
- **Average duration of procedure**: data not available[70]. The Authority may decide, within 3 months, between starting preliminary investigations or keeping record of the report. In the first case, procedural terms will be the same as for the complaint[71].
- **Outcomes for 2009, 2010, and 2011**: data not available[72].

[67] Legislative Decree June 30, 2003, n. 196, Sections 4 (1) (b) and (i), 7, 9 (2) and 154 (1) (a)
[68] Legislative Decree June 30, 2003, n. 196, Section 143 (1) (a)
[69] See under "Domande frequenti", "Attività del garante", "Segnalazione", in: http://www.garanteprivacy.it
[70] See the reply by the Data Protection Authority to a specific request, in the attached letter of April 17, 2012
[71] Regulation December 14, 2007, n. 1, Section 14
[72] See the reply by the Data Protection Authority to specific request, in the attached letter of April 17, 2012

Redress Mechanism number 3: Complaint under article 141(c), Legislative Decree June30, 2003, n. 196 – applicable to ensure respect of the right defined in article 7

- **Range of possible outcomes**:
  - declaration of no case to answer as a result of voluntary compliance by the interested party[73];
  - provisional stoppage of the data or suspension of specific data processing operations for no more than sixty days[74];
  - order to abstain from the unlawful conduct[75];
  - order to implement the necessary measures to protect the data subject's rights within a specified time[76];
  - definition of costs and office charges relating to the complaint as a lump sum, in case of earlier request by one of the parties, to be paid by the losing party or to be compensated between parties on rightful grounds[77];
  - in case of difficulty or protests regarding implementation of outcomes 1 and 2 above, the Authority may decide the ways of implementing the measures, using either its staff or the staff of other organs of the State[78];
  - no response=negative response; dismissal of the complaint if no decision is taken by the Authority within sixty days from its lodging[79];
  - fine, where an administrative violation of any of those provided for under articles 161-166 of the Code is ascertained [80].

- **Legal basis**:
  - Legislative Decree of 30 June 2003, n. 196, articles 141-145, 151;
  - Regulation on the internal procedures of external relevance aimed at performing the tasks of the Data Protection Authority – December 14, 2007, n. 1, Section 7.
- **Type of procedure**: administrative[81] before the DP Authority[82].
- **Possibilities of appeal**:
  - 2nd instance: petition before the single-judge civil court[83];
  - 3rd instance: petition before the Court of Cassation[84].
- **Burden of proof**: The complainant must specify the date and attach the request made to the data controller or processor in order to exercise the rights defined in article 7 of the Data Protection Code, or the imminent and irreparable damage which would making the said request unnecessary[85] and attach any document that may be useful in evaluating the complaint[86]. During the procedure, the data controller, processor and subject all have the right to be heard and to submit pleadings or documents[87].
- **Available mechanism to lower the burden of proof**: the DP Authority may order, also ex officio, that one or more expert assessments be carried out. It may also request the data controller, the data processor, the data subject or a third party to provide information and produce documents[88]. It may order that data banks and archiving systems be accessed as well as arrange audits or investigations[89].

---

[73] Legislative Decree June 30, 2003, n. 196, article 149 (2)
[74] Legislative Decree June 30, 2003, n. 196, article 150 (1)
[75] Legislative Decree June 30, 2003, n. 196, article 150 (2)
[76] Legislative Decree June 30, 2003, n. 196, article 150 (2)
[77] Legislative Decree June 30, 2003, n. 196, article 150 (3)
[78] Legislative Decree June 30, 2003, n. 196, article 150 (5)
[79] Legislative Decree June 30, 2003, n. 196, article 150 (2)
[80] See Redress Mechanism n. 6
[81] Figorilli, La tutela amministrativa, in: Il codice del trattamento dei dati personali, edited by Cuffaro-D'Orazio-Ricciuto, Torino, 2007, 679, 682
[82] Legislative Decree June 30, 2003, n. 196, Section 141
[83] Legislative Decree June 30, 2003, n. 196, Section 152 (1); Legislative Decree September 1, 2011, n. 150, Section 10; Civil Procedure Code, Sections 50-bis and 50-ter
[84] Constitution, Section 111(7). See Report to the Parliament for the year 2003, p. 135, in http://www.garanteprivacy.it
[85] Legislative Decree June 30, 2003, n. 196, article 147 (1) (2)
[86] Legislative Decree June 30, 2003, n. 196, article 147 (3)
[87] Legislative Decree June 30, 2003, n. 196, article 149 (3)
[88] Legislative Decree June 30, 2003, n. 196, article 150 (2) and 157
[89] Legislative Decree June 30, 2003, n. 196, article 158 (1)

- **Requirement of legal representation**: Legal representation is not necessary but parties may be assisted in the proceeding by an attorney or a person of their choice[90].
- **Is there free legal advice/representation available from a public body?** No, the law provides for legal representation only with regard to judicial proceedings[91].
- **Is there *locus standi* for DP authorities, civil society organizations and associations to initiate/be active in procedure?** Private associations are no longer entitled to start the procedure beginning from December 6, 2011. The complaint may be lodged by associations only in representation of individuals concerned. In this case a letter of attorney must be attached to the complaint[92]. Private associations can, however, participate in the proceeding as interested stakeholders (data controller and/or processor) through their respective representatives[93].
- **Cost of procedure**: examination of the complaint is subject to the payment of €150 office charges. Costs of the proceeding, to be determined as a flat rate, range from a minimum of €500 to a maximum of €1000[94].
- **Average duration of the procedure**: 60 days, after which the complaint is considered as rejected[95]. If the enquiries are especially complex or the parties agree thereto, the sixty-day term may be extended by no more than forty additional days[96].
- **Outcomes for 2009**: 360 complaints decided, 6 of which were fully upheld, 26 were partially upheld, 218 were statements of no case to answer because of voluntary compliance, 35 were unfounded complaints and 75 were inadmissible complaints.[97]
- **Outcomes for 2010**: 349 complaints decided, 30 of which were fully upheld, 21 complaints were partially upheld, 189 were statements of no case to answer because of voluntary compliance, 34 were unfounded complaints and 75 were inadmissible complaints.[98]
- **Outcomes for 2011**: 257 complaints decided, 24 of which were fully upheld, 14 complaints were partially upheld, 133 were statements of no case to answer because of voluntary compliance, 45 unfounded complaints and 41 inadmissible complaints[99].

[90] Legislative Decree June 30, 2003, n. 196, Sections 148 and 149 (6)
[91] President of the Republic's Decree, May 30, 2002, n. 115, Section 75
[92] Legislative Decree June 30, 2003, n. 196, Sections 4 (1) (b) and (i), 9 (2) and 147 (1) (a) and (2) (b)
[93] Legislative Decree June 30, 2003, n. 196, Section 149
[94] Collegial Decision of the DP Authority, October 19, 2005
[95] Legislative Decree June 30, 2003, n. 196, article 150 (2)
[96] Legislative Decree June 30, 2003, n. 196, article 149 (7)
[97] Report of the DP Authority to the Parliament for year 2009, p. 326, in: http://www.garanteprivacy.it
[98] Report of the DP Authority to the Parliament for year 2010, p. 276, in: http://www.garanteprivacy.it
[99] See the attached email received from the DP Authority on May 30, 2012. Normally, the decisions on complaints contain more than one statement. The above figures consider the most favorable statement for the complainant.

Redress Mechanism number 4: Complaint before the Civil Court under article 152, Legislative Decree 30June, 2003, n. 196

- **Range of possible outcomes**:
  - petition declared inadmissible, if it is proposed against a provision of the DP Authority later than 30 days after notification of the provision or after the date of tacit rejection, or later than 60 days if the applicant resides abroad[100];
  - order to adopt the necessary measures[101];
  - annulment, modification or revocation of the administrative provision, where the data controller is a public body[102];
  - compensation for material and non-material damages[103];
  - sentence the convicted party to the payment of the costs of the proceedings[104].
- **Legal basis**:
  - Legislative Decree 30June 2003, n. 196, articles 15, 145, 151 and 152;
  - Legislative Decree 1 September 2011, n. 150, article 10.
- **Type of procedure**: judicial proceeding before single-judge civil courts[105].
- **Possibilities of appeal**: **-** 2nd instance: petition to the Court of Cassation[106].
- **Burden of proof**: the complainant has to prove the unlawful processing of personal data[107]. With regard to compensation for damages, the complainant has to prove the unlawful processing of personal data, the damage and the cause-effect relation between the fact and the damage[108]. In cases where the law considers processing of personal data as always dangerous, the offender will never have to prove the subjective element of malice or negligence which, on the basis of article 2050 of the Civil Code, should be considered as presumed[109].
- **Available mechanism to lower the burden of proof**:
  - the Judge may order, ex officio and at any time, admittance of any means of proof, even beyond the limits established by the Civil Code, except a decision by oath[110]. In case of opposition to a provision of the DP Authority, the judge may also use materials and elements obtained directly, even though there is no obligation to do so[111];
  - with regard to compensation for damages, the reference to article 2050 od the Civil code in article 15, Legislative Decree 196/2003, provides the basis for a presumption of guilt of the offender, with consequent inversion of of the burden of proof. The offender (data controller and/or processor) will have to prove that all reasonable steps to prevent injuries had been taken and that, therefore, damages have been due to unforeseeable circumstances or force majeure[112]. There is also an interpretation which excludes the need to prove damages[113].
  - according to the Court of Cassation[114], damages should always be proved in order to be compensated, albeit through presumptions[115].

---

[100] Legislative Decree September 1, 2011, n. 150, article 10(3)

[101] Legislative Decree September 1, 2011, n. 150, article 10(6)

[102] Legislative Decree September 1, 2011, n. 150, article 10(6)

[103] Legislative Decree September 1, 2011, n. 150, article 10(6); Legislative Decree June 30, 2003, n. 196, Section 15

[104] Legislative Decree September 1, 2011, n. 150, article 10(6)

[105] Legislative Decree September 1, 2011, n. 150, article 10(1) and (2)

[106] Legislative Decree September 1, 2011, n. 150, article 10(6); Constitution, Section 111 (7)

[107] Civil Code, Section 2697

[108] Civil Code, Sections 2043 and 2697

[109] Legislative Decree June 30, 2003, n. 196, Section 15; Civil Code, Sections 2043 and 2050

[110] Civil Procedure Code, Section 421

[111] Figorilli, La tutela amministrativa, in Il codice del trattamento dei dati personali, edited by Cuffaro-D'Orazio-Ricciuto, Torino, 2007, 700

[112] Court of Cassation, January 30, 2009, n. 2468; Tribunal of Orvieto, November 23, 2002. Among scholars: Finocchiaro, Privacy e protezione dei dati personali, Bologna, 2012, 278; Gritti, La responsabilità civile nel trattamento dei dati personali, in Cuffaro - D'Orazio – Ricciuto, Il codice del trattamento dei dati personali, Torino, 2007, 157-161; Acciai –Melchionna, Le regole generali per il trattamento dei dati personali, in Acciai (a cura di), Il diritto alla protezione dei dati personali, Rimini, 2004, 85.

[113] Court of Cassation, April 3, 2001, n. 4881; Tribunal of Milano February 18, 2001

[114] Court of Cassation, United Sections, November 11, 2008, n. 26972. With specific reference to personal data, see Tribunal of Napoli, April 28, 2003.

- **Requirement of legal representation**: Legal representation is mandatory[116].
- **Is there free legal advice/representation available from a public body?** Free legal advice/representation by the state is offered to those whose annual gross income does not exceed €10,628.16[117].
- **Is there locus standi for DP authorities, civil society organizations and associations to initiate/be active in procedure?** Private associations are no longer entitled to start the procedure beginning from December 6, 2011, but they can, however, participate in the proceedings as interested stakeholders (data controller and/or processor) through their respective representatives[118]. The DP Authority is passively entitled to participate in the proceedings regarding opposition to its own provisions[119].
- **Cost of procedure**: data not available[120].
- **Average duration of procedure**: the first hearing must take place within 60 days from the date the complaint is lodged[121]. Proceedings normally end, on the average, in 15-20 days[122].
- **Outcomes for 2009**: 5 petitions dismissed, 3 petitions upheld and 1 declared inadmissible[123].
- **Outcomes for 2010**: 5 petitions upheld and 1 dismissed[124].
- **Outcomes for 2011**: 11 petitions dismissed and 4 petitions upheld and 3 partly upheld. [125]

---

[115] Tribunal of Milano, May 19, 2005; Tribunal of Mantova, August 5, 2009

[116] Legislative Decree September 1, 2011, n. 150, Section 2 (1); Civil Procedure Code, Section 8 (3)

[117] Amendments to the Legal Aid Act March 29, 2001, n. 134; President of the Republic's Decree May 30, 2002, n. 115, Sections 74-141.

[118] Legislative Decree June 30, 2003, n. 196, Section 149

[119] Court of Cassation, May 20, 2002, n. 7341

[120] See the attached request sent to the DP Authority on March 26, 2012

[121] Civil Procedure Code, Section 415 (3)

[122] See the answer supplied to specific request by the Data Protection Authority with the attached letter of April 17, 2012

[123] Database Italgiure Web of the Court of Cassation; Database Dejure, Giuffré. Both databases collect all the decisions of the Court of Cassation but only the most significant decisions of District Courts of Appeal and Tribunals.

[124] Database Italgiure Web of the Court of Cassation; Database Dejure, Giuffré.

[125] Database Italgiure Web of the Court of Cassation; Database Dejure, Giuffré.

Redress Mechanism number 5: Administrative violations

- **Range of possible outcomes**:
  1. fine from €6.000 to €36.000 for omission or inadequate information to the data subject in breach of section 13 of the Data Protection Code[126];
  2. fine from €10.000 to €60.000 for illegal transfer of data[127];
  3. fine from €1.000 to €6.000 for illegal communication of personal data regarding the condition of health[128];
  4. fine from €10.000 to €120.000 for unlawful processing pursuant to article 167 of the Privacy Code or without the adoption of minimum safety measures[129];
  5. fine from €30.000 to € 180.000 for failure to respect the prescriptions and restrictions of the Data Protection Authority[130];
  6. fine from €10.000 to €120.000 for processing by telephone or paper mail in violation of the right to oppose processing of data[131];
  7. fine from €10.000 to €50.000 for retention of telephone or computer traffic data[132];
  8. - fine from €25,000 to €150,000 for failure by the provider of a publicly accessible electronic communications service to inform the DP Authority of violations of personal data. In cases of minor violations, taking into account the economic or social nature of the service provided, the minimum and maximum limits of the fine are reduced to two-fifths [133].
  9. - fine from €150 to €1,000 for each person or client to whom the provider of a publicly accessible electronic communications service omits or delays communication of violation of personal data. The fine cannot exceed 5% of the provider's volume of activity in the last fiscal year. In cases of minor violations, taking into account the economic or social nature of the service provided, the minimum and maximum limits of the fine are reduced to two-fifths[134];
  10. - fine from €20,000 to €120,000 for failure by the provider of a publicly accessible electronic communications service to keep record of all violations of personal data, the consequences and measures taken to remedy such violations. In cases of minor violations, taking into account the economic or social nature of the service provided, the minimum and maximum limits of the fine are reduced to two-fifths[135];
  11. fine from €20,000 to €120,000 for failure to notify or notifying with incomplete information the DP Authority of processing of sensitive data[136];
  12. fine from €10,000 to €60,000 for failure to provide information or submit documents to the Authority[137];
  13. fine from €50,000 to €300,000 for repeated breaches by parties that manage databases of particular importance or size[138];
  14. fine from €3,000 to €18,000 for use by a professional of telephone, email, automated calling systems without human intervention or fax, without prior consent of the consumer[139];

---

[126] Legislative Decree June 30, 2003, n. 196, Section 161

[127] Legislative Decree June 30, 2003, n. 196, Section 162 (1)

[128] Legislative Decree June 30, 2003, n. 196, Section 162 (2)

[129] Legislative Decree June 30, 2003, n. 196, Section 162 (2-bis)

[130] Legislative Decree June 30, 2003, n. 196, Section 162 (2-ter)

[131] Legislative Decree June 30, 2003, n. 196, Section 162 (2-quater)

[132] Legislative Decree June 30, 2003, n. 196, Section 162-bis

[133] Legislative Decree June 30, 2003, n. 196, Sections 32-bis(1)(8) and 162-ter(1)(5), introduced by Legislative Decree May 28, 2012, n. 68 (Amendments to the Privacy Code in the implementation of the Directives 2009/136/EC, regarding the processing of personal data and protection of privacy in the electronic communications sector, and 2009/140/EC, on electronic communications networks and services, and Regulation (EC) n. 2006/2004 on cooperation between national authorities responsible for enforcement of consumer protection), Section 1(3)(9).

[134] Legislative Decree June 30, 2003, n. 196, Sections 32-bis (2) (8) and 162-ter (2) (3) (5), introduced by Legislative Decree May 28, 2012, n. 68, Section 1(3) (9)

[135] Legislative Decree June 30, 2003, n. 196, Sections 32-bis (7) (8) and 162-ter (4) (5), introduced by Legislative Decree May 28, 2012, n. 68, Section 1(3) (9)

[136] Legislative Decree June 30, 2003, n. 196, Section 163

[137] Legislative Decree June 30, 2003, n. 196, Section 164

[138] Legislative Decree June 30, 2003, n. 196, Section 164-bis (2)

[139] Legislative Decree September 6, 2005, n. 206, Section 58 and 62

15. in more serious cases or when the violation involves several data subjects, the minimum and maximum thresholds of the applicable fines are doubled[140];
16. fines may be increased by up to four times when they may turn out to be ineffective on account of the economic status of the sanctioned[141];
17. for less serious violations the minimum and maximum thresholds of the applicable fines are reduced to two-fifths[142];
18. Accessory administrative sanction of full or partial publication of the injunction, in one or more newspapers specified in the same provision[143].

- **Legal basis**:
  - Legislative Decree June 30, 2003, n. 196, articles 161-166;
  - Regulation on the internal procedures of external relevance aimed at performing the tasks of the Data Protection Authority –December 14, 2007, n. 1, article 16;
  - Legislative Decree September 6, 2005, n. 206 (Consumer Code), articles 58 and 62.
- **Type of procedure**:
  - the procedure for the adoption of the sanction is administrative before the DP Authority;
  - the appeal phase against the sanctions is judicial before a single-judge civil court.
- **Possibilities of appeals**:
  - 2nd instance: petition according to Section 152 before a single-judge civil court[144];
  - 3rd instance: petition to the Court of Cassation[145].
- **Burden of proof**:
  - in the administrative procedure, there is no burden of proof. Violations may be ascertained as a result of reports, claims or complaints, in which cases the relevant discipline applies, or ex officio, in the exercise of the powers of the DP Authority[146]. Within 30 days from notification of the violation, any interested person may send to the DP Authority pleadings and relevant documents and may ask to be heard[147];
  - In the case of opposition to DP Authority injunction, the opposing party has to prove the facts on which the appeal is grounded.
- **Available mechanism to lower the burden of proof**:
  - In the administrative procedure, the DP Authority may order, also ex officio, that one or more expert assessments be carried out[148]. It may also request the data controller and/or processor, the data subject or a third party to provide information and produce documents[149] or that data banks and archiving systems be accessed as well as arrange other audits or investigations[150].
  - It is also allowed payment of the lowest sum between the third part of the maximum penalty prescribed for the offence committed or twice the minimum penalty prescribed by law, in addition to costs of the proceeding, within 60 days from the injunction[151];
  - in the judicial procedure, the Judge may decide, ex officio and at any time, the admittance of any means of proof, even beyond the limits established by the Civil Code, except decision by oath[152]. In case of opposition to a measure of the DP Authority, judges may also use materials and elements collected by the DP Authority,

[140] Legislative Decree June 30, 2003, n. 196, article 164-bis (3)
[141] Legislative Decree June 30, 2003, n. 196, article 164-bis (4)
[142] Legislative Decree June 30, 2003, n. 196, article 164-bis (1), as amended by Legislative Decree 28May 2012, n. 68, article 1(10)
[143] Legislative Decree September 1, 2011, n. 150, article 6 (2)
[144] Legislative Decree September 1, 2011, n. 150, article 10
[145] Constitution, article 111 (7). See Report of the DP Authority to the Parliament for the year 2003, p. 135, in: www.garanteprivacy.it
[146] Legislative Decree June 30, 2003, article 157-160; Regulation December 14, 2007, n. 1, articles 15-16
[147] Amendments to the Criminal Legal System Act November 24, 1981, n. 689, article 18
[148] Legislative Decree June 30, 2003, article 149 (5)
[149] Legislative Decree June 30, 2003, article 150 (2) and 157
[150] Legislative Decree June 30, 2003, article 158 (1)
[151] Amendments to the Criminal Legal System Act, November 24, 1989, n. 689, article 16
[152] Civil Procedure Code, article 421

though there is no obligation to do so[153]. To this end, the Judge may order the DP Authority to submit a copy of the report with all documents related to the investigation and notification of the violation[154].

- **Requirement of legal representation**: Legal representation is not necessary[155]. Parties can take part in the proceedings personally.
- **Is there free legal advice/representation available from a public body?** Free legal advice/representation by the State is offered only for the proceedings before the Court to those whose annual gross income does not exceed €10,628.16[156].
- **Is there locus standi for DP authorities, civil society organizations and associations to initiate/be active in procedure?** Private associations are no longer entitled to start the procedure beginning from December 6, 2011. Complaints to the DP Authority can be presented by associations only in representation of involved physical persons. In such cases, a power of attorney must be attached to the complaint. Private associations can be addressees of injunctions and, as a consequence, they can participate in the proceedings as interested stakeholders (data controller and/or processor) through their respective representatives.[157]. They can also initiate proceedings before a civil Court to oppose the injunction[158].
- **Cost of procedure**: - for the administrative procedure[159], €150.00 for office charges in case of complaint. In case of appeal, €150 for office charges. The cost of the proceedings to be determined as a lump sum, ranges from €500.00 to €1,000.00 and is it to be paid by the party that loses the case.
- **Average duration of procedure**: data not available[160]. Nevertheless the notification of the injunction, if not carried at the moment of the violation must be done within 90 days from the date the administrative violation was ascertained for residents in the country or within 360 days for residents abroad[161].
- **Outcomes for 2009**:
  - 101 sanctions imposed by injunction[162];
  - €1,572,432 paid in cash as settlement of fine[163].
- **Outcomes for 2010**:
  - 98 sanctions imposed by injunction[164];
  - €306,400 paid in compliance with injunctions[165];
  - € 3.046.001 paid in cash as settlement of fine[166].
- **Outcomes for 2011**:
  - 174 sanctions imposed by injunction[167];
  - €830,530 paid in compliance with injunctions[168];
  - €1,810,400 paid in cash as settlement of fine[169].

---

[153] Figorilli, La tutela amministrativa, in Il codice del trattamento dei dati personali, edited by Cuffaro-D'Orazio-Ricciuto, Torino, 2007, 700

[154] Legislative Decree September 1, 2011, n. 150, article 6 (8)

[155] Legislative Decree September 1, 2011, n. 150, article 6 (9)

[156] Amendments to the Legal Aid Act March 29, 2001, n. 134; President of the Republic's Decree May 30, 2002, n. 115, articles 74-141.

[157] Legislative Decree June 30, 2003, articles 143 (1) (a) and 149

[158] Civil Procedure Code, article 75 (2) (3)

[159] See the answer supplied to specific request by the Data Protection Authority with the attached letter of April 17, 2012

[160] See the answer supplied to specific request by the Data Protection Authority with the attached letter of April 17, 2012

[161] Legislative Decree June 30, 2003, n. 196, article 166; Modifications to the Criminal Legal System Act, November 24, 1989, n. 689, article 14 (1) (2)

[162] Annual Report of the DP Authority to the Parliament for the year 2009, p. 325, in www.garanteprivacy.it

[163] Annual Report of the DP Authority to the Parliament for the year 2009, p. 329, in www.garanteprivacy.it

[164] Annual Report of the DP Authority to the Parliament for the year 2010, p. 275, in www.garanteprivacy.it

[165] Annual Report of the DP Authority to the Parliament for the year 2010, p. 279, in www.garanteprivacy.it

[166] Annual Report of the DP Authority to the Parliament for the year 2010, p. 279, in www.garanteprivacy.it

[167] See the attached email received from the DP Authority on May 30, 2012

[168] See the attached email received from the DP Authority on May 30, 2012

[169] See the attached email received from the DP Authority on May 30, 2012

Redress Mechanism number 6: Judicial Protection under Criminal Law

- **Range of possible outcomes**:
  1. imprisonment from 6 to 24 months and publication of the relevant judgement[170] for unlawful data processing, communication or dissemination[171] carried out with the aim of making profit from it or for the purpose of damaging third parties;
  2. imprisonment from 1 to 3 years and publication of the relevant judgement[172] in case of unlawful processing of sensitive and judicial data or data that carries specific risks or in case of violation of the prohibition to publish and disseminate or in case of transfer of data abroad, carried out with the aim of making profit from it or for the purpose of damaging third parties[173];
  3. imprisonment from 6 months to 3 years and publication of the relevant judgement[174] for false declarations and communications to the DP Authority[175];
  4. detention for up to 2 years for failure to adopt minimum safety measures[176];
  5. imprisonment from 3 months to 2 years and publication of the relevant judgement[177] for failure to comply with provisions of the DP Authority[178];
  6. fine from €154,95 and up to €1549,50 or detention for up to 1 year for an employer who violates the ban on surveying workers' opinions and the ban on the use of audio-visual equipment in the workplace[179];
  7. imprisonment from 3 months to 10 years or fine from €51 up to €516 for the crime of falsehood in electronic documents[180];
  8. imprisonment from 6 months to 5 years for the crime of unlawful interference in private life[181];
  9. imprisonment for up to 8 years for the crime of unauthorized access to a computer system[182];
  10. imprisonment for up to 2 years and fine of up to €10,329 for the crime of illegal possession or distribution of access codes to computer systems[183];
  11. imprisonment for up to 2 years and fine of up to €10,329 for distribution of equipment, devices or software meant to damage or disrupt a computer system[184];
  12. imprisonment for up to 1 year or fine from €30 and up to €516 for violation, theft or destruction of correspondence[185];
  13. imprisonment from 6 months to 5 years and/or fine from €30 and up to €516 for violation, theft or destruction of correspondence committed by a person assigned to the postal, telegraph or telephone service[186];
  14. imprisonment from 6 months to 5 years for unlawful knowledge, interruption or obstruction of telephone or telegraphic communications [187];
  15. imprisonment from 1 year to 5 years for installation of equipment designed to tap or obstruct telegraphic or telephone communications and conversations [188];
  16. imprisonment from 1 to 5 years for the crime of falsifying, altering and destroying the contents of telegraphic and telephone communications or conversations [189];

---

[170] Legislative Decree June 30, 2003, n. 196, article 172
[171] Legislative Decree June 30, 2003, n. 196, article 167 (1)
[172] Legislative Decree June 30, 2003, n. 196, article 172
[173] Legislative Decree June 30, 2003, n. 196, article 167 (2)
[174] Legislative Decree June 30, 2003, n. 196, article 172
[175] Legislative Decree June 30, 2003, n. 196, article 168
[176] Legislative Decree June 30, 2003, n. 196, article 169 (1)
[177] Legislative Decree June 30, 2003, n. 196, article 172
[178] Legislative Decree June 30, 2003, n. 196, article 170
[179] Legislative Decree June 30, 2003, n. 196, article 171; Protection of workers' freedom and dignity, freedom of association, activity of unions in workplaces and rules on employment Act, May 20, 1970, n. 300, Section 38
[180] Criminal Code, article 491-bis
[181] Criminal Code, article 615-bis
[182] Criminal Code, article 615-ter
[183] Criminal Code, article 615-quater
[184] Criminal Code, article 615-quinquies
[185] Criminal Code, article 616
[186] Criminal Code, article 619
[187] Criminal Code, article 617
[188] Criminal Code, article 617-bis

17. imprisonment from 6 months to 5 years for the crime of tapping, obstructing and interruption of computer communications[190];
18. imprisonment from 1 to 5 years for the crime of installation of equipment meant to tap, obstruct or unlawfully interrupt computer communication[191];
19. imprisonment from 1 to 5 years for the crime of forging, altering or deleting of the contents of computer communication[192];
20. imprisonment for up to 6 months or fine from €103 to €516 for the crime of disclosure of contents of correspondence[193];
21. imprisonment from 6 months to 3 years for the crime of disclosure of contents of correspondence committed by a person assigned to the postal, telegraph or telephone service[194];
22. imprisonment for up to 3 years or fine from €103 and up to €1,032 for disclosure of contents of secret documents[195];
23. imprisonment for up to 1 year or fine from €30 to €516 for the crime of disclosure of professional secret[196];
24. imprisonment for up to 2 years for disclosure of scientific or industrial secrets[197];
25. imprisonment from 6 months to 4 years for the crime of destruction of information, data and computer programmes[198];
26. imprisonment from 1 to 8 years for the crime of destruction of information, data and computer programmes used by State or other public body or, in any case, of public utility [199];
27. imprisonment from 1 to 5 years for damage to computer systems[200];
28. imprisonment from 1 to 8 years for the crime of damaging computer systems of public utility[201];
29. Imprisonment for up to 3 years and fine from €51 to €1,032 for computer fraud by the subjects providing services of electronic signature certification
30. detention from 3 to 6 months for disclosure of the particulars or images of a person victim of sexual abuse[202].

- **Legal basis**:
  - Legislative Decree 30 June 2003, articles 167-172;
  - Criminal Code, articles 491-bis, 615-bis – 623, 635-bis – 635-quinquies, 640-quinquies, 734-bis ;
  - Legislative Decree 8 June 2001, n. 231 (Administrative liability of legal persons, companies and associations without legal personality), article 24-bis.
- **Type of procedure**: judicial proceeding before a single-judge criminal court[203].
- **Possibilities of appeal**:
  - 2nd instance: District Court of Appeal[204];
  - 3rd instance: Court of Cassation[205].
- **Burden of proof**: it is the Public Accuse who has to prove the constitutive elements of the criminal offence and the guilt of the accused beyond any reasonable doubt[206].
- **Available mechanism to lower the burden of proof**:

---

189 Criminal Code, article 617-quater
190 Criminal Code, article 617-quinquies
191 Criminal Code, article 617-sexies
192 Criminal Code, article 618
193 Criminal Code, article 620
194 Criminal Code, article 621
195 Criminal Code, article 622
196 Criminal Code, article 623
197 Criminal Code, article 635-bis
198 Criminal Code, article 635-ter
199 Criminal Code, article 635-quater
200 Criminal Code, article 635-quinquies
201 Criminal Code, article 640-quinquies
202 Criminal Code, article 734-bis
203 Criminal Procedure Code, articles 6 and 33-ter
204 Criminal Procedure Code, article 596 (1)
205 Constitution, article 111 (7); Criminal Procedure Code, article 568 (2)
206 Criminal Procedure Code, article 533

- the offence of failure to adopt minimum security measures is extinguished if the offender complies with the requirements established by law within 6 months and pays the sum of €30,000.00[207];
- the employer who has violated the ban on surveying workers' opinions and the use of audio-visual equipment in the workplace may be allowed to pay, before the hearings begin or before the final ruling, half of the highest fine imposed on the administrative violation and the costs of the proceedings[208]. Payment extinguishes the crime.

- **Requirement of legal representation**: Legal representation is mandatory[209].
- **Is there free legal advice/representation available from a public body?** Free legal advice/representation by the State is provided for those whose annual gross income does not exceed €10,628.16[210].
- **Is there locus standi for DP authorities, civil society organizations and associations to initiate/be active in procedure?** There is administrative liability of companies for offences under articles 491-bis, 615-ter, 615-quater, 615-quinquies, 617-quater, 617-quinquies, 635-bis, 635-ter, 635-quater, 635-quinquies and 640-quinquies of the Criminal Code[211]. The DP Authority has no *locus standi* in the procedure but it has a duty to report to judicial authorities, any facts or circumstances constituting offence subject to prosecution ex officio and of which it is informed while it is carrying out its functions[212].
- **Cost of procedure**: data not available[213].
- **Average duration of procedure**: data not available[214].
- **Outcomes for 2009**: 6 acquittals and 3 convictions[215].
- **Outcomes for 2010**: 4 acquittals, 9 convictions and 1 decision of no case to answer[216].
- **Outcomes for 2011**: 10 acquittals and 21 convictions[217].

[207] Legislative Decree June 30, 2003, n. 196, Section 169 (2)
[208] Criminal Code, article 162-bis
[209] Criminal Procedure Code, article 96 and 97
[210] Amendments to the Legal Aid Act March 29, 2001, n. 134; President of the Republic's Decree May 30, 2002, n. 115, articles 74-141.
[211] Legislative Decree June 8, 2001, n. 231 (Administrative liability of legal persons, companies and associations without legal personality), article 24-bis
[212] Legislative Decree June 30, 2003, n. 196, article 154 (1) (i)
[213] See the attached request sent to the DP Authority on March 26, 2012
[214] See the attached request sent to the DP Authority on March 26, 2012
[215] Database Italgiure Web of the Supreme Court of Cassation; Database Dejure Giuffré
[216] Database Italgiure Web of the Supreme Court of Cassation; Database Dejure Giuffré
[217] Database Italgiure Web of the Supreme Court of Cassation; Database Dejure Giuffré

Redress Mechanism number n. 7: Complaint to the Ombudsman or to the Commission for Access to Administrative Documents against provisions that authorise access

- **Range of possible outcomes**:
  - silence=rejection; complaint is considered as dismissed if no decision is taken within 30 days from the date the complaint was lodged[218];
  - dismissal of complaint;
  - complaint upheld. In this case the Ombudsman or Commission informs the interested party and the Public Administration that initiated the proceeding. If the latter fails to confirm the decision of the Ombudsman with a motivated document within 30 days from receipt of communication from the Ombusdman or Commission, access is denied or deferred[219].
- **Legal basis**:
  - Administrative Proceeding and Right to Access to Administrative Documents Act, 7 August 1990, n. 241, Articles 22-28, Law 7 August 1990, nr.241 (New provisions on administrative procedures and the right of access to administrative documents).
  - Decree of the President of the Republic, 12 April 2006, n. 184 (Regulation on Access to Administrative Documents);
  - Legislative Decree 2 July 2010, n. 104 (Code of Administrative Trial), articles 23, 116 and 133 (1) (a)
  - Legislative Decree 30 June 2003, n. 196, articles 59 and 60.
- **Type of procedure**: administrative[220].
- **Possibilities of appeal**:
  - 2nd instance: Regional Administrative Court[221];
  - 3rd instance: Council of State[222].
- **Burden of proof**: the complainant must attach evidence of personal data that may be subject to disclosure as a result of access to the administrative document[223].
- **Available mechanism to lower the burden of proof**:
  - It is enough for the complainant to attach evidence of the existence of sensitive data (regarding ethnic or racial origin, political opinion, religion etc) and judicial data or data that may reveal the condition of health or sexual life of the data subject;
  - access to administrative documents needed to legally protect one's rights, can be granted only if strictly necessary when sensitive or judicial data are involved[224];
  - access to administrative documents which contain very sensitive personal data on health or sexual life, requested in order to legally protect one's rights, can be granted only if strictly necessary and in defence of rights of equal ranking[225] (rights of the person or another right or inviolable fundamental freedom);
  - access is excluded to administrative documents containing psycho-aptitude test information about third parties in the context of recruitment procedures[226] as well as fiscal procedures;
  - further exclusion from access to administrative documents can be introduced by a specific Government regulation to protect the right to privacy[227].

---

[218] Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Section 25 (4)

[219] Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Sections 24 (4) and 25 (4)

[220] Council of State, May 27, 2003, n. 2938

[221] Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Sections 24 (4) and (5); Legislative Decree July 2, 2010, n. 104 (Administrative Trial Code), Section 13

[222] Legislative Decree July 2, 2010, n. 104 (Administrative Trial Code), Section 116 (5)

[223] Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Section 24 (6)

[224] Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Section 24 (7); Legislative Decree June 30, 2003, Section 60

[225] Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Section 24 (7); Legislative Decree June 30, 2003, Section 60

[226] Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Section 24 (1) (d)

[227] Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Section 24 (6)

- **Requirement of legal representation**: Legal representation is not necessary. Even in proceedings before the Regional Administrative Tribunal (TAR) and the Council of State, the parties can take part personally.
- **Is there free legal advice/representation available from a public body?** Not for the first instance. Free legal representation is provided by the State in proceeding before the Regional Administrative Tribunal or the Council of State only for those whose annual gross income does not exceed € 10.628,16[228].
- **Is there locus standi for DP authorities, civil society organizations and associations to initiate/be active in procedure?** Civil society organisations and associations have a right of access if they have a legally protected, direct, concrete and current interest related to the administrative document to which access is requested[229]. Hence they may also lodge a complaint with the Ombudsman or the Commission but they cannot rely on the provisions of the Privacy Code. The DP Authority may have a passive *locus standi* before the Regional Administrative and the Council of State but not in proceedings before the Commission for access to administrative documents and to the Ombudsman. Nevertheless, if access is refused or deferred for reasons related to personal data of third parties, the Commission or the Ombudsman may proceed on the grounds of the opinion of the DP Authority. In a similar manner, during proceedings under the data protection law which concern access to administrative documents, the DP Authority must seek the obligatory but not binding opinion of the Commission on access to administrative documents[230].
- **Cost of procedure**: lodging a complaint with the Commission on access to administrative documents is free of charge[231].
- **Average duration of procedure**: the duration of the procedure before the Commission or the Ombudsman is maximum 90 days[232].
- **Outcomes for 2009**:
  - no data available for complaints to the Ombudsman[233];
  - a total of 479 complaints were lodged with the Commission (which include also those against denial or deferral of access by public administrations)[234]; 34% of these were completely upheld, 3% were partly upheld, 9% were declared no case to answer, 13% were dismissed, 39% were declared inadmissible (e.g. for incompetence, failure to notify adverse parties, failure to attach the contested measure, absolute lack of details of the facts in the complaint) or not receivable for lateness, 6% were suspended for investigative tasks (e.g. notification of adverse parties unknown to the applicant, request for additional items or clarifications to the applicant or the defendant) [235];
  - 8 appeals filed with the Regional Administrative Tribunal (TAR) against the provisions of the Commission, of which 4 were declared inadmissible, 3 were dismissed and 1 was declared not receivable[236].
- **Outcomes for 2010**:
  - no data available for petitions before the Ombudsman[237];
  - a total of 603 complaints were lodged with the Commission in the reference period (including also complaints against denial or deferral of access by public administrations) [238]; 30% of these were upheld, 4% were partly upheld, 9% were declared no case to answer, 16% were dismissed, 39% were declared inadmissible (e.g. for

---

[228] Amendments to the Legal Aid Act of March 29, 2001, n. 134; President of the Republic's Decree May 30, 2002, n. 115, Sections 74-141.

[229] Administrative proceeding and right to access to administrative documents Act, August 7, 1990, n. 241, Section 22 (1) (b)

[230] Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Section 25 (4)

[231] Annual Report to the Parliament for year 2010 on Transparency of Activity of Public Administration, p. 75, in www.commissioneaccesso.it

[232] Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Section 25; President of the Republic's Decree April 12, 2006, n. 184 (Regulation on access to administrative documents), Section 12

[233] See the attached request sent to the Commission on May 4, 2012

[234] Annual Report to the Parliament for year 2010 on Transparency of Activity of Public Administration, p. 73, in: www.commissioneaccesso.it

[235] Annual Report to the Parliament for year 2010 on Transparency of Activity of Public Administration, pp. 76-78, in: www.commissioneaccesso.it

[236] Annual Report to the Parliament for year 2010 on Transparency of Activity of Public Administration, p. 122, in: www.commissioneaccesso.it

[237] See the attached request sent to the Commission on May 4, 2012

[238] Annual Report to the Parliament for 2010 on Transparency of Activity of Public Administration, p. 73, in: www.commissioneaccesso.it

incompetence, failure to notify adverse parties, failure to attach the contested measure, absolute lack of details of facts in the petition) or not receivable, 4% were suspended for investigative tasks (e.g. notification of adverse parties unknown to the applicant, request for additional items or clarifications to the applicant or the defendant) [239];

- 15 appeals were lodged with the Regional Administrative Tribunal (TAR) against the provisions of the Commission for access to administrative documents; outcomes were as follows: 3 upheld, 5 rejected, 6 declared inadmissible and 1 was a statement of no case to answer[240].

- Outcomes for 2011:
  - no data available[241].

[239] Annual Report for 2010 on Transparency of Activity of Public Administration, p. 76-78, in www.commissioneaccesso.it

[240] Annual Report to the Parliament for 2010 on Transparency of Activity of Public Administration, p. 122, in www.commissioneaccesso.it

[241] See the attached request sent to the Commission on May 4, 2012

Redress Mechanism number n. 8: Complaint to the Regional Administrative Tribunal against provisions that authorise access to administrative documents

- **Range of possible outcomes**:
  - dismissal of the complaint. In this case the Tribunal orders the disclosure of the administrative documents within a maximum of 30 days, specifying where necessary, the modality that should be observed[242];
  - appeal upheld. In this case access to administrative documents is denied or deferred[243].
- **Legal basis**:
  - Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Sections 22-28;
  - Decree of the President of the Republic, 12 April 2006, n. 184 (Regulation on Access to Administrative Documents);
  - Legislative Decree 2 July 2010, n. 104 (Administrative Trial Code), Sections 23, 116 and 133 (1) (a)
  - Legislative Decree 30 June 2003, n. 196, Sections 59 and 60.
- **Type of procedure**: judicial procedure before the Regional Administrative Tribunal (TAR).
- **Possibilities of appeal**:
  2nd instance: Council of State[244].
- **Burden of proof**: the complainant is only required to attach evidence of personal data which is susceptible to disclosure as result of access to the administrative documents[245].
- **Available mechanism to lower the burden of proof**:
  - It is enough for the complainant to attach evidence of the existence of sensitive data (regarding ethnic or racial origin, political opinion, religion etc) and judicial data or data that may reveal the condition of health or sexual life of the data subject;
  - access to administrative documents needed to legally protect one's rights, can be granted only if strictly necessary when sensitive or judicial data are involved[246];
  - access to administrative documents which contain very sensitive personal data on health or sexual life, requested in order to legally protect one's rights, can be granted only if strictly necessary and in defence of rights of equal ranking[247] (rights of the person or another right or inviolable fundamental freedom);
  - access is excluded to administrative documents containing psycho-aptitude test information about third parties in the context of recruitment procedures[248] as well as fiscal procedures;
  - further exclusion from access to administrative documents can be introduced by a specific Government regulation to protect the right to privacy[249].
- **Requirement of legal representation**: Legal representation is not necessary. Even in proceedings before the Regional Administrative Tribunal and the Council of State, the parties can participate personally.
- **Is there free legal advice/representation available from a public body?** Free legal representation by the State is provided for those whose annual gross income does not exceed € 10.628,16[250].
- **Is there *locus standi* for DP authorities, civil society organizations and associations to initiate/be active in procedure?** Public interest organizations have a right of access if they have a legally protected, direct, concrete and current interest related to the administrative document to which access is requested[251]. The DP Authority may have a passive *locus standi* before the Regional Administrative and the Council of State but not in proceedings

[242] Legislative Decree July 2, 2010, n. 104 (Administrative Trial Code), Section 116 (4)
[243] Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Section 25 (4)
[244] Legislative Decree July 2, 2010, n. 104 (Administrative Trial Code), Section 116 (5)
[245] Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Section 24 (6)
[246] Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Section 24 (7); Legislative Decree June 30, 2003, Section 60
[247] Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Section 24 (7); Legislative Decree June 30, 2003, Section 60
[248] Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Section 24 (1) (d)
[249] Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Section 24 (6)
[250] Amendments to the Legal Aid Act March 29, 2001, n. 134; President of the Republic's Decree May 30, 2002, n. 115, Sections 74-141.
[251] Administrative proceeding and right to access to administrative documents Act, August 7, 1990, n. 241, Section 22 (1) (b)

before the Commission for access to administrative documents and the Ombudsman. Nevertheless, if access is refused or deferred for reasons related to personal data of third parties, the Commission or the Ombudsman may proceed on the grounds of the opinion of the DP Authority. In a similar manner, during proceedings under the data protection law which concern access to administrative documents, the DP Authority must seek the obligatory but not binding opinion of the Commission on access to administrative documents[252].

- **Cost of procedure**: no data available[253].
- **Average duration of procedure**: no data available[254].
- **Outcomes for 2009**: with regard to complaints lodged with the Regional Administrative Tribunal against decisions of the Commission for access to administrative documents, a total of 8 complaints were lodged of which 4 were declared inadmissible, 3 were rejected and 1 was declared no case to answer[255]. With regard to complaints before the single-judge Court, the total was 4 of which 3 were upheld, granting access and only 1 was rejected denying access.
- **Outcomes for 2010**: a total of 15 complaints were lodged before the Regional Administrative Tribunal, of which 6 were declared inadmissible, 1 no case to answer, 5 rejected and 3 upheld. In the case of the single-judge Court, 11 complaints were lodged with 7 upheld, granting access, 4 dismissed, one of which granted access[256].
- **Outcomes for 2011**: No data available for the Regional Administrative Tribunal in the reference period. In the case of the single-judge Court, 1 complaint upheld, granting access and another dismissed, denying access[257].

[252] Administrative Proceeding and Right to Access to Administrative Documents Act, August 7, 1990, n. 241, Section 25 (4)
[253] See the attachd request sent to the Commission on May 4, 2012
[254] See the attachd request sent to the Commission on May 4, 2012
[255] Database Dejure Giuffré
[256] Database Dejure Giuffré
[257] Database Dejure Giuffré