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Data protection: Redress mechanisms and their use

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Lithuanian Social Research Center, Institute for Ethnic Studies

Indrė Skersytė

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## Mapping of redress mechanisms in the area of data protection

Redress Mechanism Number	Type of possible outcomes of procedure	First Instance	Total Number of times this procedure was initiated in 2009 (please provide source of information in footnote)	Total Number of times this procedure was initiated in 2010 (please provide source of information in footnote)	Total Number of times this procedure was initiated in 2011 (please provide source of information in footnote)
1	Instructions on personal data processing and protection issues <sup>1</sup>	State Data Protection Inspectorate	32	54	90
2	Administrative instructions <sup>2</sup>	State Data Protection Inspectorate	-	-	16
3	Fine <sup>3</sup>	District Court	11	27	5
4	Warning <sup>4</sup>	District Court	3	3	0
5	Compensation for pecuniary damage <sup>5</sup>	District Court	No information available	No information available	No information available
6	Compensation for non-pecuniary damage <sup>6</sup>	District Court	No information available	No information available	No information available

<sup>1</sup> Communication of NFP-Lithuania with the State Data Protection Inspectorate (*Valstybinė duomenų apsaugos inspekcija*) (2 May 2012).

<sup>2</sup> *Ibid.*

<sup>3</sup> Communication of NFP-Lithuania with the National Courts Administration (*Nacionalinė teismų administracija*) (25 April 2012).

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

## Detailed information

### Ad Redress Mechanism Number 1: Instructions on personal data processing and protection issues

- Range of possible outcomes: The content of the instruction on personal data processing and protection issues depends on the findings of the investigation of the complaint (e. g., the State Data Protection Inspectorate (*Valstybinė duomenų apsaugos inspekcija*) may give an order for the data controller to rectify, supplement, erase inaccurate or incomplete data or suspend their further processing, ensure proper organisational and technical data protection measures, implement the rights of a data subject, not to collect excessive personal data in the future, etc.)
- Legal basis: Article 41 (1.5) of the Law on the Legal Protection of Personal Data (*Lietuvos Respublikos asmens duomenų teisinės apsaugos įstatymas*)<sup>7</sup> states that the State Data Protection Inspectorate has the right to give instructions to data controllers on personal data processing and protection issues; Article 48.1 and Article 48.2 of the Rules of the inspections carried out by the State Data Protection Inspectorate, adopted by the Order of 30 December 2012 No. 1T-104(1.12) of the director of the State Data Protection Inspectorate (*Valstybinės duomenų apsaugos inspekcijos vykdomy patikrinimų atlikimo taisyklės, patvirtintos Valstybinės duomenų apsaugos inspekcijos direktoriaus 2010 m. gruodžio 30 d. įsakymu Nr. 1T-104(1.12)*),<sup>8</sup> states that instructions are given when it is established that there is a threat that the Law on the Legal Protection of Personal Data could be breached and it is necessary to take organisational and technical data protection measures in order to avoid this threat and when the breaches of the Law on the Legal Protection of Personal Data are established but the term to prepare a record of administrative breach of law has terminated.
- Type of procedure: Data protection authority
- Possibilities of appeal: According to Article 19 (1) of the Law on Administrative Proceedings (*Lietuvos Respublikos administracinių bylų teisenos įstatymas*),<sup>9</sup> complaints about the instructions of the State Data Protection Inspectorate may be lodged with Vilnius Regional Administrative Court (*Vilniaus apygardos administracinis teismas*). Article 20 (1.1) of the Law on Administrative Proceedings states that the Supreme Administrative Court of Lithuania (*Lietuvos vyriausiosios administracinis teismas*) is the appellate court for cases that have been heard in Vilnius Regional Administrative Court.
- Burden of proof: The complainant has the right to lodge a complaint with the State Data Protection Inspectorate. The State Data Protection Inspectorate has to prove that acts (omissions) of the data controller violated the provisions of the Law on the Legal Protection of Personal Data, and the data controller has to prove that his acts (omissions) meet the provisions of the Law on the Legal Protection of Personal Data.
- Available mechanism to lower the burden of proof: The laws and other legal acts do not provide for such mechanisms.
- Requirement of legal representation: The complainant can initiate and be active at a procedure on his own. There are no requirements for the complainant to have a representative.
- Is there free legal advice/representation available from a public body (please specify the public body)? According to Article 11 (1) of the Law on State-Guaranteed Legal Aid (*Lietuvos Respublikos valstybės garantuojamos teisinės pagalbos įstatymas*),<sup>10</sup> all citizens of the Republic of Lithuania, citizens of other member states of the European Union, other natural persons residing lawfully in the Republic of Lithuania and other member states of the European Union, and other persons specified in international treaties of the Republic of Lithuania are eligible for primary legal aid. 'Primary legal aid' means the provision of legal information in accordance with the procedure specified by this law and legal advice and drafting of the documents to be submitted to state and

<sup>7</sup> Lithuania, Seimas (1996; 2008).

<sup>8</sup> Lithuania, State Data Protection Inspectorate (2010).

<sup>9</sup> Lithuania, Seimas (1999; 2001).

<sup>10</sup> Lithuania, Seimas (2000; 2005).

municipal institutions, with the exception of procedural documents. Primary legal aid is organised and/or provided by a municipal institution. The state guarantees and covers 100 per cent of the costs of primary legal aid.

Only certain persons fulfilling the conditions specified in Article 11 (2) of the Law on State-Guaranteed Legal Aid are eligible for secondary legal aid. 'Secondary legal aid' means the drafting of documents and representation in court. The provision of secondary legal aid is ensured by state-guaranteed legal aid services. Secondary legal aid is provided by attorneys. The Law on State-Guaranteed Legal Aid states that the costs of secondary legal aid provided to people is guaranteed and covered by the state 100 per cent or 50 per cent by taking account of a person's property and income.

- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? Civil society organisations and associations can inform the State Data Protection Inspectorate about acts (omissions) of the data controller violating the Law on the Legal Protection of Personal Data. There have been cases in the practice of the State Data Protection Inspectorate when complaints were lodged by trade unions<sup>11</sup>. According to Article 42 (3) of the Law on the Legal Protection of Personal Data<sup>12</sup>, if the State Data Protection Inspectorate has received an oral complaint or has established the existence of elements constituting a violation of this law from the mass media or other sources, the State Data Protection Inspectorate may initiate an investigation on its own.
- Cost of procedure: No information available<sup>13</sup>.
- Average duration of procedure: The average duration of complaint investigation by the State Data Protection Inspectorate was 66 days in 2009, 53 days in 2010, and 45 days in 2011<sup>14</sup>.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. No information available<sup>15</sup>.

#### **Ad Redress Mechanism Number 2: Administrative instructions**

- Range of possible outcomes: LTL 250
- Legal basis: According to Article 41 (1.6) of the Law on the Legal Protection of Personal Data<sup>16</sup>, the State Data Protection Inspectorate has the right to prepare records of administrative breaches in accordance with the procedure specified in laws. This right is also established in Article 259<sup>1</sup> (1.1) of the Code of Administrative Offences (*Lietuvos Respublikos administracinių teisės pažeidimų kodeksas*)<sup>17</sup>. Article 50.1 of the Rules for the inspections carried out by the State Data Protection Inspectorate, adopted by Order of 30 December 2012 No. 1T-104(1.12) of the director of the State Data Protection Inspectorate,<sup>18</sup> states that records of administrative offences are prepared when after investigation of a complaint, infringements of the Law on the Legal Protection of Personal Data are found. Article 260<sup>1</sup> of the Code of Administrative Offences<sup>19</sup> provides the possibility for a person who is being brought to administrative liability to prepare administrative instructions. Administrative instructions are prepared by authorised officials of the State Data Protection Inspectorate. Administrative instructions are a proposal for this person to pay half of the minimal fine specified in the respective article of the Code of Administrative Offences. Administrative instructions are written into a record of administrative breach of law. Article 30<sup>2</sup> of the Code of Administrative Offences states that when administrative instructions are prepared according to Article 260<sup>1</sup> of the Code of Administrative Offences, a fine equal to half of the minimal fine

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<sup>11</sup> Phone communication of NFP-Lithuania with the Chief Specialist of the State Data Protection Inspectorate (3 April 2012).

<sup>12</sup> Lithuania, Seimas (1996; 2008).

<sup>13</sup> Communication of NFP-Lithuania with the State Data Protection Inspectorate (*Valstybinė duomenų apsaugos inspekcija*) (2 May 2012).

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> Lithuania, Seimas (1996; 2008).

<sup>17</sup> Lithuania, Supreme Council of the Lithuanian Soviet Socialist Republic (1984).

<sup>18</sup> Lithuania, State Data Protection Inspectorate (2010).

<sup>19</sup> Lithuania, Supreme Council of the Lithuanian Soviet Socialist Republic (1984).

specified in the respective article of the Code of Administrative Offences is imposed on a person. Amendments to the Code of Administrative Offences that established the possibility to prepare administrative instructions came into force on 1 January 2011.

- Type of procedure: Administrative
- Possibilities of appeal: Administrative instructions cannot be appealed. When a person fulfils administrative instructions, the proceedings of the administrative breach of law are finished. If a person fails to fulfil the administrative instructions on time, the administrative instructions are considered to be invalid and the record of administrative breach of law is sent to court.
- Burden of proof: The complainant has the right to lodge a complaint with the State Data Protection Inspectorate. The State Data Protection Inspectorate has to prove that acts (omissions) of the data controller violated the provisions of the Law on the Legal Protection of Personal Data and the data controller has to prove that his acts (omissions) meet the provisions of the Law on the Legal Protection of Personal Data.
- Available mechanism to lower the burden of proof: The laws and other legal acts do not provide for such mechanisms.
- Requirement of legal representation: The complainant can initiate and be active in a procedure on his own. There are no requirements for the complainant to have a representative.
- Is there free legal advice/representation available from a public body (please specify the public body)? According to Article 11 (1) of the Law on State-Guaranteed Legal Aid,<sup>20</sup> all citizens of the Republic of Lithuania, citizens of other member states of the European Union, other natural persons residing lawfully in the Republic of Lithuania and other member states of the European Union, and other persons specified in international treaties of the Republic of Lithuania are eligible for primary legal aid. 'Primary legal aid' means the provision of legal information in accordance with the procedure specified in this law and legal advice and drafting of the documents to be submitted to state and municipal institutions, with the exception of procedural documents. Primary legal aid is organised and/or provided by a municipal institution. The state guarantees and covers 100 per cent of the costs of primary legal aid.  
Only certain persons fulfilling the conditions specified in Article 11 (2) of the Law on State-Guaranteed Legal Aid are eligible for secondary legal aid. 'Secondary legal aid' means the drafting of documents and representation in court. The provision of secondary legal aid is ensured by state-guaranteed legal aid services. Secondary legal aid is provided by attorneys. The Law on State-Guaranteed Legal Aid states that the costs of secondary legal aid provided to people is guaranteed and covered by the state 100 per cent or 50 per cent by taking account of a person's property and income.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? Civil society organisations and associations can inform the State Data Protection Inspectorate about acts (omissions) of the data controller violating the Law on the Legal Protection of Personal Data. There have been cases in the practice of the State Data Protection Inspectorate when complaints were lodged by trade unions<sup>21</sup>. According to Article 42 (3) of the Law on the Legal Protection of Personal Data<sup>22</sup>, if the State Data Protection Inspectorate receives an oral complaint or establishes the existence of elements constituting a violation of this law from mass media or other sources, the State Data Protection Inspectorate may initiate an investigation on its own.
- Cost of procedure: No information available<sup>23</sup>.
- Average duration of procedure: The average duration of complaint investigation by the State Data Protection Inspectorate was 66 days in 2009, 53 days in 2011, and 45 days in 2012<sup>24</sup>.

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<sup>20</sup> Lithuania, Seimas (2000; 2005).

<sup>21</sup> Phone communication of NFP-Lithuania with the Chief Specialist of the State Data Protection Inspectorate (3 April 2012).

<sup>22</sup> Lithuania, Seimas (1996; 2008).

<sup>23</sup> Communication of NFP-Lithuania with the State Data Protection Inspectorate (*Valstybinė duomenų apsaugos inspekcija*) (2 May 2012).

<sup>24</sup> *Ibid.*

- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. No information available<sup>25</sup>.

**Ad Redress Mechanism Number 3: Fine**

- Range of possible outcomes: LTL 500–1000 (if the same kind of offence is committed by a person who has been already punished for such an offence in the past year, the fine is LTL 1000–2000)
- Legal basis: According to Article 41 (1.6) of the Law on the Legal Protection of Personal Data<sup>26</sup>, the State Data Protection Inspectorate has the right to prepare records of administrative offences in accordance with the procedure specified in laws. This right is also established in Article 259<sup>1</sup> (1.1) of the Code of Administrative Offences<sup>27</sup>. Article 50.1 of the Rules for inspections carried out by the State Data Protection Inspectorate, adopted by the Order of 30 December 2012 No. 1T-104(1.12) of the director of the State Data Protection Inspectorate,<sup>28</sup> states that records of administrative offences are prepared when after investigation of a complaint, infringements of the Law on the Legal Protection of Personal Data are found. Article 214<sup>14</sup> of the Code of Administrative Offences<sup>29</sup> provides for liability for processing personal data infringing the Law on the Legal Protection of Personal Data; Article 214<sup>16</sup> of the Code of Administrative Offences provides for liability for breaches of a data subject's rights established in the Law on the Legal Protection of Personal Data. According to Article 30<sup>1</sup> of the Code of Administrative Offences, the court, taking into account the nature of the offence, personality of the offender, and extenuating circumstances and following the criteria of justice and reasonableness, can impose a smaller penalty than the minimal penalty foreseen in a sanction or a less strict penalty than the penalty foreseen in a sanction or no administrative penalty at all.
- Type of procedure: Administrative
- Possibilities of appeal: According to Article 302<sup>2</sup> of the Code of Administrative Offences, regional court is the appellate court for cases that have been heard in district court.
- Burden of proof: The complainant has the right to lodge a complaint with the State Data Protection Inspectorate. The State Data Protection Inspectorate has to prove that acts (omissions) of the data controller violated provisions of the Law on the Legal Protection of Personal Data, and the data controller has to prove that his acts (omissions) meet the provisions of the Law on the Legal Protection of Personal Data.
- Available mechanism to lower the burden of proof: The laws and other legal acts do not provide for such mechanisms.
- Requirement of legal representation: The complainant can initiate and be active in a procedure on his own. There are no requirements for the complainant to have a representative.
- Is there free legal advice/representation available from a public body (please specify the public body)? According to Article 11 (1) of the Law on State-Guaranteed Legal Aid,<sup>30</sup> all citizens of the Republic of Lithuania, citizens of other member states of the European Union, other natural persons residing lawfully in the Republic of Lithuania and other member states of the European Union, and other persons specified in international treaties of the Republic of Lithuania are eligible for primary legal aid. 'Primary legal aid' means the provision of legal information in accordance with the procedure specified in this law and legal advice and drafting of the documents to be submitted to state and municipal institutions, with the exception of procedural documents. Primary legal aid is organised and/or provided by a municipal institution. The state guarantees and covers 100 per cent of the costs of primary legal aid.  
Only certain persons fulfilling the conditions specified in Article 11 (2) of the Law on State-Guaranteed Legal Aid are eligible for secondary legal aid. 'Secondary legal aid' means the drafting

<sup>25</sup> *Ibid.*

<sup>26</sup> Lithuania, Seimas (1996; 2008).

<sup>27</sup> Lithuania, Supreme Council of the Lithuanian Soviet Socialist Republic (1984).

<sup>28</sup> Lithuania, State Data Protection Inspectorate (2010).

<sup>29</sup> Lithuania, Supreme Council of the Lithuanian Soviet Socialist Republic (1984).

<sup>30</sup> Lithuania, Seimas (2000; 2005).

of documents and representation in court. The provision of secondary legal aid is ensured by state-guaranteed legal aid services. Secondary legal aid is provided by attorneys. The Law on State-Guaranteed Legal Aid states that the costs of secondary legal aid provided to people is guaranteed and covered by the state 100 per cent or 50 per cent by taking account of a person's property and income.

- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? Civil society organisations and associations can inform the State Data Protection Inspectorate about acts (omissions) of the data controller violating the Law on the Legal Protection of Personal Data. There have been cases in the practice of the State Data Protection Inspectorate when complaints were lodged by trade unions<sup>31</sup>. According to Article 42 (3) of the Law on the Legal Protection of Personal Data<sup>32</sup>, if the State Data Protection Inspectorate receives an oral complaint or establishes the existence of elements constituting a violation of this law from the mass media or other sources, the State Data Protection Inspectorate may initiate an investigation on its own.
- Cost of procedure: No information available<sup>33</sup>.
- Average duration of procedure: The average duration of complaint investigation by the State Data Protection Inspectorate was 66 days in 2009, 53 days in 2010, and 45 days in 2011<sup>34</sup>. According to Article 261 (1) of the Code of Administrative Offences<sup>35</sup>, the record of an administrative offence is sent to court within 3 days after it has been prepared. The average length of time cases involving administrative offences (Articles 214<sup>14</sup>, 214<sup>16</sup>, 214<sup>23</sup> of the Code of Administrative Offences) in court was 49,51 days in 2009–2011<sup>36</sup>.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. In 2009 for the administrative offences specified in Articles 214<sup>14</sup>, 214<sup>16</sup>, and 214<sup>23</sup> of the Code of Administrative Offences, district courts imposed the following fines: 2 times—fine LTL 100, 1 time—fine LTL 250, 6 times—fine LTL 500, 1 time—fine LTL 600, 1 time—fine LTL 750. In 2010 for the administrative offences specified in Articles 214<sup>14</sup>, 214<sup>16</sup>, and 214<sup>23</sup> of the Code of Administrative Offences, district courts imposed the following fines: 2 times—fine LTL 50, 4 times—fine LTL 100, 1 time—fine LTL 250, 2 times—fine LTL 300, 13 times—fine LTL 500, 4 times—fine LTL 600, 1 time—fine LTL 750. In 2011 for the administrative offences specified in Articles 214<sup>14</sup>, 214<sup>16</sup>, and 214<sup>23</sup> of the Code of Administrative Offences, district courts imposed the following fines: 1 time—fine LTL 100, 1 time—fine LTL 300, 3 times—fine LTL 500<sup>37</sup>.

#### **Ad Redress Mechanism Number 4: Warning**

- Range of possible outcomes: Warning
- Legal basis: According to Article 41 (1.6) of the Law on the Legal Protection of Personal Data<sup>38</sup>, the State Data Protection Inspectorate has the right to prepare records of administrative offences in accordance with the procedure specified in the law. This right is also established in Article 259<sup>1</sup> (1.1) of the Code of Administrative Offences<sup>39</sup>. Article 50.1 of the Rules of the inspections carried out by the State Data Protection Inspectorate, adopted by the Order of 30 December 2012 No. 1T-104(1.12) of the director of the State Data Protection Inspectorate,<sup>40</sup> states that records of administrative offences are prepared when after investigation of a complaint, infringements of the

<sup>31</sup> Phone communication of NFP-Lithuania with the Chief Specialist of the State Data Protection Inspectorate (3 April 2012).

<sup>32</sup> Lithuania, Seimas (1996; 2008).

<sup>33</sup> Communication of NFP-Lithuania with the National Courts Administration (*Nacionalinė teismų administracija*) (25 April 2012).

<sup>34</sup> Communication of NFP-Lithuania with the State Data Protection Inspectorate (*Valstybinė duomenų apsaugos inspekcija*) (2 May 2012).

<sup>35</sup> Lithuania, Supreme Council of the Lithuanian Soviet Socialist Republic (1984).

<sup>36</sup> Communication of NFP-Lithuania with the National Courts Administration (*Nacionalinė teismų administracija*) (25 April 2012).

<sup>37</sup> *Ibid.*

<sup>38</sup> Lithuania, Seimas (1996; 2008).

<sup>39</sup> Lithuania, Supreme Council of the Lithuanian Soviet Socialist Republic (1984).

<sup>40</sup> Lithuania, State Data Protection Inspectorate (2010).

Law on the Legal Protection of Personal Data are found. Article 214<sup>14</sup> of the Code of Administrative Offences<sup>41</sup> provides for liability for the processing of personal data infringing the Law on the Legal Protection of Personal Data; Article 214<sup>16</sup> of the Code of Administrative Offences provides for liability for breaches of a data subject's rights established in the Law on the Legal Protection of Personal Data. According to Article 30<sup>1</sup> of the Code of Administrative Offences, a court, taking into account the nature of the offence, personality of the offender, and extenuating circumstances and following the criteria of justice and reasonableness, can impose a smaller penalty than the minimal penalty specified in a sanction, a less strict penalty than the penalty specified in a sanction, or no administrative penalty at all.

- Type of procedure: Administrative
- Possibilities of appeal: According to Article 302<sup>2</sup> of the Code of Administrative Offences, regional court is the appellate court for cases that have been heard in district court.
- Burden of proof: The complainant has the right to lodge a complaint with the State Data Protection Inspectorate. The State Data Protection Inspectorate has to prove that acts (omissions) of the data controller violated the provisions of the Law on the Legal Protection of Personal Data, and the data controller has to prove that his acts (omissions) meet the provisions of the Law on the Legal Protection of Personal Data.
- Available mechanism to lower the burden of proof: The laws and other legal acts do not provide for such mechanisms.
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own? The complainant can initiate and be active in a procedure on his own. There are no requirements for the complainant to have a representative
- Is there free legal advice/representation available from a public body (please specify the public body)? According to Article 11 (1) of the Law on State-Guaranteed Legal Aid,<sup>42</sup> all citizens of the Republic of Lithuania, citizens of other member states of the European Union, other natural persons residing lawfully in the Republic of Lithuania and other member states of the European Union, and other persons specified in international treaties of the Republic of Lithuania are eligible for primary legal aid. 'Primary legal aid' means the provision of legal information in accordance with the procedure specified by this law and legal advice and drafting of the documents to be submitted to state and municipal institutions, with the exception of procedural documents. Primary legal aid is organised and/or provided by a municipal institution. The state guarantees and covers 100 per cent of the costs of primary legal aid.  
Only certain persons fulfilling the conditions specified in Article 11 (2) of the Law on State-Guaranteed Legal Aid are eligible for secondary legal aid. 'Secondary legal aid' means the drafting of documents and representation in court. The provision of secondary legal aid is ensured by state-guaranteed legal aid services. Secondary legal aid is provided by attorneys. The Law on State-Guaranteed Legal Aid states that the costs of secondary legal aid provided to people is guaranteed and covered by the state 100 per cent or 50 per cent by taking account of a person's property and income.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? Civil society organisations and associations can inform the State Data Protection Inspectorate about acts (omissions) of the data controller violating the Law on the Legal Protection of Personal Data. There have been cases in the practice of the State Data Protection Inspectorate when complaints were lodged by trade unions<sup>43</sup>. According to Article 42 (3) of the Law on the Legal Protection of Personal Data<sup>44</sup>, if the State Data Protection Inspectorate receives an oral complaint or establishes the existence of elements constituting a violation of this law from mass media or other sources, the State Data Protection Inspectorate may initiate an investigation on its own.

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<sup>41</sup> Lithuania, Supreme Council of the Lithuanian Soviet Socialist Republic (1984).

<sup>42</sup> Lithuania, Seimas (2000; 2005).

<sup>43</sup> Phone communication of NFP-Lithuania with the Chief Specialist of the State Data Protection Inspectorate (3 April 2012).

<sup>44</sup> Lithuania, Seimas (1996; 2008).



- Cost of procedure: No information available<sup>45</sup>.
- Average duration of procedure: please provide available information. The average duration of complaint investigation by the State Data Protection Inspectorate was 66 days in 2009, 53 days in 2010, and 45 days in 2011<sup>46</sup>. According to Article 261 (1) of the Code of Administrative Offences<sup>47</sup>, the record of an administrative offence must be sent to court within 3 days after the moment it is prepared. The average duration of cases involving an administrative offence (Articles 214<sup>14</sup>, 214<sup>16</sup>, 214<sup>23</sup> of the Code of Administrative Offences) in court was 49,51 days in 2009–2011<sup>48</sup>.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. No information available<sup>49</sup>.

#### **Ad Redress Mechanism Number 5: Compensation for Pecuniary Damage**

- Range of possible outcomes: Not stipulated in the law.
- Legal basis: Article 54(1) the Law on the Legal Protection of Personal Data<sup>50</sup> states that any person who has sustained damage as a result of the unlawful processing of personal data or any other acts (omissions) by the data controller, the data processor, or other persons violating the provisions of this law is entitled to claim compensation for the pecuniary damage he sustains. According to Article 54(2) of the Law on the Legal Protection of Personal Data, the extent of pecuniary damage is determined by a court.
- Type of procedure: Civil
- Possibilities of appeal: According to Article 26 of the Code of Civil Procedure (*Lietuvos Respublikos civilinio proceso kodeksas*)<sup>51</sup> all civil cases are heard by district courts as a first instance (except cases specified in Articles 27 and 28 of the Code of Civil Procedure). Article 27(1.1) of the Code of Civil Procedure states that regional courts as courts of first instance hear the cases when the amount of civil claim exceeds LTL 150,000. Article 301 (3) of the Code of Civil Procedure states that regional courts are the appellate courts for the cases that have been heard in district court. Article 301 (4) of the Code of Civil Procedure states that the Court of Appeal of Lithuania (*Lietuvos apeliacinis teismas*) is the appellate court for the cases that have been heard in regional court. According to Article 340 (1) and (2) of the Code of Civil Procedure, the Supreme Court of Lithuania (*Lietuvos Aukščiausioji Teismai*) is the court of cassation for reviewing decisions and rulings in civil cases passed by courts of appeal.
- Burden of proof: Article 178 of the Code of Civil Procedure states that the parties in a civil procedure have to prove the circumstances on which they base their requirements and arguments, except for the cases when the circumstances do not need to be proved according to this code. The plaintiff therefore has to prove that he has suffered pecuniary damage and the amount of it.
- Available mechanism to lower the burden of proof: Article 182 of the Code of Civil Procedure specifies the circumstances that do not need to be proved (e. g., circumstances based on facts acknowledged by the parties or circumstances established by a court decision in another civil or administrative case with the same parties).
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own? The plaintiff can initiate and be active in a procedure on his own. There are no requirements for the complainant to have a representative.
- Is there free legal advice/representation available from a public body (please specify the public body)? According to Article 11 (1) of the Law on State-Guaranteed Legal Aid,<sup>52</sup> all citizens of the Republic of Lithuania, citizens of other member states of the European Union, other natural

<sup>45</sup> Communication of NFP-Lithuania with the National Courts Administration (*Nacionalinė teismų administracija*) (25 April 2012).

<sup>46</sup> Communication of NFP-Lithuania with the State Data Protection Inspectorate (Valstybinė duomenų apsaugos inspekcija) (2 May 2012).

<sup>47</sup> Lithuania, Supreme Council of the Lithuanian Soviet Socialist Republic (1984).

<sup>48</sup> Communication of NFP-Lithuania with the National Courts Administration (*Nacionalinė teismų administracija*) (25 April 2012).

<sup>49</sup> *Ibid.*

<sup>50</sup> Lithuania, Seimas (1996; 2008).

<sup>51</sup> Lithuania, Seimas (2002).

<sup>52</sup> Lithuania, Seimas (2000; 2005).

persons residing lawfully in the Republic of Lithuania and other member states of the European Union, and other persons specified in international treaties of the Republic of Lithuania are eligible for primary legal aid. 'Primary legal aid' means the provision of legal information in accordance with the procedure specified by this law and legal advice and drafting of the documents to be submitted to state and municipal institutions, with the exception of procedural documents. Primary legal aid is organised and/or provided by a municipal institution. The state guarantees and covers 100 per cent of the costs of primary legal aid.

Only certain persons fulfilling conditions specified in Article 11 (2) of the Law on State-Guaranteed Legal Aid are eligible for secondary legal aid. 'Secondary legal aid' means the drafting of documents and representation in court. The provision of secondary legal aid is ensured by state-guaranteed legal aid services. Secondary legal aid is provided by attorneys. The Law on State-Guaranteed Legal Aid states that the costs of secondary legal aid provided to people are guaranteed and covered by the state 100 per cent or 50 per cent by taking account of a person's property and income.

- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? The State Data Protection Inspectorate does not participate in civil procedures. Article 56 (1.6) of the Code of Civil Procedure<sup>53</sup> states that associations and other public legal persons can be authorised representatives of natural persons in court under certain conditions.
- Cost of procedure: No information available<sup>54</sup>.
- Average duration of procedure: No information available<sup>55</sup>.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. No information available<sup>56</sup>.

#### **Ad Redress Mechanism Number 6: Compensation for Non-Pecuniary Damage**

- Range of possible outcomes: Not stipulated in the law.
- Legal basis: Article 54(1) the Law on the Legal Protection of Personal Data<sup>57</sup> states that any person who has sustained damage as a result of the unlawful processing of personal data or any other acts/omissions by the data controller, the data processor, or other persons violating the provisions of this law is entitled to claim compensation for the non-pecuniary damage he sustained. According to Article 54(2) of the Law on the Legal Protection of Personal Data, the extent of non-pecuniary damage is determined by a court. Article 6.250 (2) of the Civil Code (*Lietuvos Respublikos civilinis kodeksas*)<sup>58</sup> states that when assessing the amount of non-pecuniary damage, the court must take into consideration the consequences of the damage sustained, the gravity of the fault of the person who caused the damage, his financial status, the amount of pecuniary damage sustained by the aggrieved person, and any other circumstances of importance for the case, including the criteria of good faith, justice and reasonableness.
- Type of procedure: Civil.
- Possibilities of appeal: According to Article 26 of the Code of Civil Procedure,<sup>59</sup> all civil cases are heard by district courts as courts of first instance (except the cases specified in Articles 27 and 28 of the Code of Civil Procedure). Article 301 (3) of the Code of Civil Procedure states that regional courts are the appellate courts for cases that have been heard in district court. According to Article 340 (1) and (2) of the Code of Civil Procedure, the Supreme Court of Lithuania is the court of cassation for reviewing decisions and rulings in civil cases passed by courts of appeal.
- Burden of proof: Article 178 of the Code of Civil Procedure states that the parties in a civil procedure have to prove the circumstances on which they base their requirements and arguments,

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<sup>53</sup> Lithuania, Seimas (2002).

<sup>54</sup> Communication of NFP-Lithuania with the National Courts Administration (Nacionalinė teismų administracija) (25 April 2012).

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> Lithuania, Seimas (1996; 2008).

<sup>58</sup> Lithuania, Seimas (2000).

<sup>59</sup> Lithuania, Seimas (2002).

except for cases when the circumstances do not need to be proved according to this code. The plaintiff therefore has to prove that he suffered non-pecuniary damage and the amount of it.

- Available mechanism to lower the burden of proof: Article 182 of the Code of Civil Procedure specifies the circumstances that do not need to be proved (e. g., circumstances based on facts acknowledged by the parties or circumstances established by a court decision in another civil or administrative case with the same parties).
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own? The plaintiff can initiate and be active in a procedure on his own. There are no requirements for the complainant to have a representative.
- Is there free legal advice/representation available from a public body (please specify the public body)? According to Article 11 (1) of the Law on State-Guaranteed Legal Aid,<sup>60</sup> all citizens of the Republic of Lithuania, citizens of other member states of the European Union, other natural persons residing lawfully in the Republic of Lithuania and other member states of the European Union, and other persons specified in international treaties of the Republic of Lithuania are eligible for primary legal aid. 'Primary legal aid' means the provision of legal information in accordance with the procedure specified by this Law and legal advice and drafting of the documents to be submitted to state and municipal institutions, with the exception of procedural documents. Primary legal aid is organised and/or provided by a municipal institution. The state guarantees and covers 100 per cent of the costs of primary legal aid.  
Only certain persons fulfilling the conditions specified in Article 11 (2) of the Law on State-Guaranteed Legal Aid are eligible for secondary legal aid. 'Secondary legal aid' means the drafting of documents and representation in court. Article 11 (6.3) of the Law on State-Guaranteed Legal Aid states that secondary legal aid may not be provided when the applicant is claiming non-pecuniary damage related to the protection of his honour and dignity, but has suffered no pecuniary damage. The provision of secondary legal aid is ensured by state-guaranteed legal aid services. Secondary legal aid is provided by attorneys. The Law on State-Guaranteed Legal Aid states that the costs of secondary legal aid provided to people is guaranteed and covered by the state 100 per cent or 50 per cent by taking account of a person's property and income.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? The State Data Protection Inspectorate does not participate in civil procedures. Article 56 (1.6) of the Code of Civil Procedure<sup>61</sup> states that associations and other public legal persons can be authorised representatives of natural persons in court under certain established conditions.
- Cost of procedure: No information available<sup>62</sup>.
- Average duration of procedure: No information available<sup>63</sup>.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. No information available<sup>64</sup>.

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<sup>60</sup> Lithuania, Seimas (2000; 2005).

<sup>61</sup> Lithuania, Seimas (2002).

<sup>62</sup> Communication of NFP-Lithuania with the National Courts Administration (Nacionalinė teismų administracija) (25 April 2012).

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

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