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Ad Hoc Information Report

Data protection: Redress mechanisms and their use

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Helsinki Foundation for Human Rights

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

Redress Mechanism Number	Type of possible outcomes of procedure	First Instance	Total Number of times this procedure was initiated in 2009	Total Number of times this procedure was initiated in 2010	Total Number of times this procedure was initiated in 2011
<b>1.</b>	Order to comply with the data protection law and elimination of infringement	Inspector General for the Protection of Personal Data	Order to effectuate the obligation: <b>6</b> <sup>1</sup> Complaint refusal: <b>2</b> <sup>2</sup> Discontinuation of the complaint: <b>1</b> <sup>3</sup> Refusal of the complaint and order to effectuate the obligation: <b>10</b> <sup>4</sup>	Order to effectuate the obligation: <b>13</b> <sup>5</sup> Complaint refusal: <b>14</b> <sup>6</sup> Discontinuation of the complaint: <b>1</b> <sup>7</sup>	Order to effectuate the obligation: <b>7</b> <sup>8</sup> Complaint refusal: <b>1</b> <sup>9</sup> Refusal of the complaint and order to effectuate the obligation: <b>15</b> <sup>10</sup>

<sup>1</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>2</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>3</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>4</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>5</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>6</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>7</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>8</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>9</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>10</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

	Order to complete, actualize, correct, facilitate or refuse to facilitate data	Inspector General for the Protection of Personal Data	Order to effectuate the obligation: <b>8</b> <sup>11</sup> Refusal of the complaint and order to effectuate the obligation: <b>10</b> <sup>12</sup> Refusal of the complaint and order to effectuate the obligation: <b>4</b> <sup>13</sup>	Order to effectuate the obligation: <b>14</b> <sup>14</sup> Complaint refusal: <b>8</b> <sup>15</sup> Discontinuation of the complaint: <b>2</b> <sup>16</sup>	Order to effectuate the obligation: <b>24</b> <sup>17</sup> Complaint refusal: <b>2</b> <sup>18</sup> Discontinuation of the complaint: <b>7</b> <sup>19</sup> Refusal of the complaint and order to effectuate the obligation: <b>3</b> <sup>20</sup>
	Suspension of the	Inspector General	Consent: <b>61</b> <sup>21</sup> Denial: <b>0</b> <sup>22</sup>	Consent: <b>36</b> <sup>23</sup> Denial: <b>0</b> <sup>24</sup>	Consent: <b>48</b> <sup>25</sup> Denial: <b>1</b> <sup>26</sup>

<sup>11</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>12</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>13</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>14</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>15</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>16</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>17</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>18</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>19</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>20</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>21</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>22</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>23</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

	transfer of data to a third state	for the Protection of Personal Data			Partial denial: <b>1</b> <sup>27</sup>
	Removal of data	Inspector General for the Protection of Personal Data	Order to effectuate the obligation: <b>23</b> <sup>28</sup> Refusal of the complaint and order to effectuate the obligation: <b>7</b> <sup>29</sup>	Order to effectuate the obligation: <b>15</b> <sup>30</sup> Complaint refusal: <b>5</b> <sup>31</sup> Discontinuation of the complaint: <b>2</b> <sup>32</sup>	Order to effectuate the obligation: <b>10</b> <sup>33</sup> Discontinuation of the complaint: <b>1</b> <sup>34</sup> Refusal of the complaint and order to effectuate the obligation: <b>3</b> <sup>35</sup>

<sup>24</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>25</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>26</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>27</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>28</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>29</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>30</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>31</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>32</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>33</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>34</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>35</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

2.	Complaint on the decision of the Inspector General for the Protection of Personal Data	Inspector General for the Protection of Personal Data	Maintaining decision: 93 <sup>36</sup> Reversing decision and refusing the complaint: 3 <sup>37</sup> Reversing a decision: 1 <sup>38</sup>	Maintaining decision: 83 <sup>39</sup> Reversing decision and refusing the complaint: 4 <sup>40</sup> Reversing a decision and discontinuation of the proceedings: 3 <sup>41</sup> Reversing decision partially: 2 <sup>42</sup>	Maintaining decision: 128 <sup>43</sup> Reversing a decision: 2 <sup>44</sup> Reversing decision partially: 8 <sup>45</sup>
3.	Motions for	Inspector	9 <sup>46</sup>	4 <sup>47</sup>	2 <sup>48</sup>

<sup>36</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>37</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>38</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>39</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>40</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>41</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>42</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>43</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>44</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>45</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>46</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>47</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>48</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

	disciplinary sanctions for non compliance with the law	General for the Protection of Personal Data			
<b>4.</b>	Complaint on Inspector General for the Protection of Personal Data decisions to administrative courts	Regional Administrative Court	Number of complaints: <b>73</b> <sup>49</sup> Reversing the decision: <b>35</b> <sup>50</sup> Invalidating the decision: <b>2</b> <sup>51</sup> Rejected complaints: <b>36</b> <sup>52</sup>	Number of complaints: <b>67</b> <sup>53</sup> Reversing the decision: <b>16</b> <sup>54</sup> Rejected complaints: <b>51</b> <sup>55</sup>	Number of complaints: <b>91</b> <sup>56</sup> Reversing the decision: <b>12</b> <sup>57</sup> Invalidating the decision: <b>1</b> <sup>58</sup> Rejected complaints: <b>78</b> <sup>59</sup>
	Complaint	Supreme	Number of	Number of	Number of

<sup>49</sup> Source: the official data statistic of the Regional Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA).

<sup>50</sup> Source: the official data statistic of the Regional Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA).

<sup>51</sup> Source: the official data statistic of the Regional Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA).

<sup>52</sup> Source: the official data statistic of the Regional Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA).

<sup>53</sup> Source: the official data statistic of the Regional Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA).

<sup>54</sup> Source: the official data statistic of the Regional Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA).

<sup>55</sup> Source: the official data statistic of the Regional Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA).

<sup>56</sup> Source: the official data statistic of the Regional Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA).

<sup>57</sup> Source: the official data statistic of the Regional Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA).

<sup>58</sup> Source: the official data statistic of the Regional Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA).

<sup>59</sup> Source: the official data statistic of the Regional Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-WSA).

	from the Regional Administrative Court decision	Administrative Court	complaints: <b>19</b> <sup>60</sup> Reversing the judgment: <b>1</b> <sup>61</sup> Rejected complaints: <b>18</b> <sup>62</sup>	complaints: <b>29</b> <sup>63</sup> Reversing the judgment: <b>4</b> <sup>64</sup> Rejected complaints: <b>25</b> <sup>65</sup>	complaints: <b>25</b> Reversing the judgment: <b>13</b> <sup>66</sup> Rejected complaints: <b>12</b> <sup>67</sup>
	Compensatio	Regional	<b>0</b> <sup>68</sup>	<b>0 (Please find</b>	<b>2</b> <sup>69</sup>

<sup>60</sup> Source: the official statistical data of the Supreme Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA).

<sup>61</sup> Source: the official statistical data of the Supreme Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA).

<sup>62</sup> Source: the official statistical data of the Supreme Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA).

<sup>63</sup> Source: the official statistical data of the Supreme Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA).

<sup>64</sup> Source: the official statistical data of the Supreme Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA).

<sup>65</sup> Source: the official statistical data of the Supreme Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA).

<sup>66</sup> Source: the official statistical data of the Supreme Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA).

<sup>67</sup> Source: the official statistical data of the Supreme Administrative Court available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA).

<sup>68</sup> Within the frames of works on this ad hoc information we submitted request upon access to public information to district courts. The requests concerned the number of cases in which courts found infringement of personal goods or right to privacy in connection with processing the personal data. Four district courts provided the information in which the number of proceedings concerning the personal data was indicated. The district court in Cracov informed that between 2009-2011 there were 9 civil proceedings concerning the personal data: in 2 cases the judgements were issued (in one judgement the court ruled 15 000 PLN (approx. 3 750 EUR) compensation and 2 000 PLN (500 EUR) of compensation devoted to a public goal, in second judgement the court ruled 20 000 PLN (approx. 5 000 EUR) compensation; in 2 cases the parties reached a friendly agreement (accordingly to the first agreement, the defendant agreed to make an apology, accordingly to the second agreement the defendant had to pay 4 000 PLN (approx. 1 000 EUR) of compensation); four cases were dismissed and one case was rejected. The district court in Łódź informed that between 2009-2011 decided one case in which ruled 1 000 PLN (approx. 250 EUR) of compensation and 1 000 PLN (approx. 250 EUR) of compensation devoted to a public goal. The district court in Warsaw informed that between 2009-2011 one case was adjudicated in which the court ruled 30 000 PLN (approx. 7500 EUR) of compensation. Despite the fact, that in our requests upon access to public information we asked to indicate the year of the judgement, the district courts in Cracov, Łódź and Warsaw did not provide information in which year the mentioned above judgements were issued.

<sup>69</sup> Source: the response (dated on 9 May 2012) of the President of the District Court in Gliwice to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

5.	n in civil proceedings	Courts		the explanation in footnote 68)	
	Compensation in civil proceedings	Appellate Courts	1 <sup>70</sup>	11 <sup>71</sup>	4 <sup>72</sup>
6.	Introducing criminal complaint to prosecution authorities by the Inspector General	Prosecution Authorities	27 <sup>73</sup>	18 <sup>74</sup>	10 <sup>75</sup>
	Introduction of criminal proceedings based on the	Prosecution Authorities	Initiated proceedings: 387 <sup>76</sup> Bill of indictment lodged: 332 <sup>77</sup>	Initiated proceedings: 330 <sup>78</sup>	Initiated proceedings: 317 <sup>80</sup> Bill of

<sup>70</sup> Within the frames of works on this ad hoc information we submitted request upon access to public information to Appellate Courts. The requests concerned the number of cases in which courts found infringement of personal goods or right to privacy in connection with processing the personal data. The Appellate Court in Gdańsk informed that between 2009-2011 decided one case concerning the personal data, however did not inform about the result of this case. The Appellate Court in Katowice informed that between 2009-2011 decided one case concerning the personal data in which ruled 6 000 PLN (approx. 1 500 EUR) of compensation. Despite the fact, that in our public information requests we asked to indicate the year of the judgement, the Appellate Courts in Gdańsk and Katowice did not provide information in which year the mentioned above judgements were issued. Furthermore, we have analyzed files at the Appellate Courts. Analyzing files in the Warsaw Appellate Court we observed that in many cases the breach of privacy related to the publication of image or data of the plaintiff. We assume that the lower number of cases in other appellate and regional courts resulted from the stricter interpretation of the motion inquiry, excluding press cases, where the plaintiff claimed violation of the right to privacy.

<sup>71</sup> Source: the case files available upon request at the Appellate Court in Warsaw.

<sup>72</sup> Source: the case files available upon request at the Appellate Court in Warsaw.

<sup>73</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>74</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>75</sup> Source: the response (dated on 28 May 2012) of the Inspector General of Personal Data Protection to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>76</sup> Source: the response (dated on 8 May 2012) of the Prosecutor General to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>77</sup> Source: the response (dated on 8 May 2012) of the Prosecutor General to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>78</sup> Source: the response (dated on 8 May 2012) of the Prosecutor General to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

	Law on data protection			Bill of indictment lodged: <b>279</b> <sup>79</sup>	indictment lodged: <b>106</b> <sup>81</sup>
<b>7.</b>	Criminal proceedings – all sentenced	District and Regional courts – final decisions	Art. 49 par. 1 <sup>82</sup> : <b>5</b> <sup>83</sup> Art. 49 par. 2 <sup>84</sup> : <b>1</b> <sup>85</sup> Art. 51 par. 1 <sup>86</sup> : <b>7</b> <sup>87</sup> Art. 51 par. 2 <sup>88</sup> : <b>1</b> <sup>89</sup> Art. 52 <sup>90</sup> : <b>3</b> <sup>91</sup> Art. 53 <sup>92</sup> : <b>2</b> <sup>93</sup>	Art. 49 par. 1: <b>7</b> <sup>94</sup> Art. 49 par. 2: <b>1</b> <sup>95</sup> Art. 51 par. 1: <b>8</b> <sup>96</sup> Art. 51 par. 2: <b>2</b> <sup>97</sup>	No data available <sup>100</sup>

<sup>80</sup> Source: the response (dated on 8 May 2012) of the Prosecutor General to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>79</sup> Source: the response (dated on 8 May 2012) of the Prosecutor General to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>81</sup> Source: the response (dated on 8 May 2012) of the Prosecutor General to the request upon access to public information submitted by the Helsinki Foundation for Human Rights.

<sup>82</sup> Article 49 par. 1: “A person processing personal data which should not be processed or not being entitled to process data is subject to fine, limitation of liberty or deprivation of liberty up to 2 years”.

<sup>83</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>84</sup> Article 49 par. 2: “If the act described in par. 1 concerns data which reveal the race and ethnic origins, political preferences, religious and philosophical belief, religious, political party and association membership, data on health condition, genetic code, addictions or sexual life the perpetrator may be sentence to fine, limitation of liberty or deprivation of liberty up to 3 years”.

<sup>85</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>86</sup> Article 51 par. 1: “Enabling the access to data to an authorized person by the person who is administrating data or protecting data is subject to fine, limitation of liberty or deprivation of liberty up to 2 years”.

<sup>87</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>88</sup> Article 51 par. 2: “A perpetrator described in par. 1 acting unintentionally is subject to fine, limitation of liberty or deprivation of liberty up to 1 year”.

<sup>89</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>90</sup> Article 52: “A person administrating data which failed to secure, intentionally or unintentionally the data, to prevent their removal by an unauthorized person, their damage or destruction is subject to fine, limitation of liberty or deprivation of liberty up to 1 year”.

<sup>91</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>92</sup> Article 53: “The lack of registration of collected data is subject to fine, limitation of liberty or deprivation of liberty up to 1 year”.

<sup>93</sup> Source: the official data statistic of the Ministry of Justice available upon request.

<sup>94</sup> Source: the official data statistic of the Ministry of Justice available upon request.

<sup>95</sup> Source: the official data statistic of the Ministry of Justice available upon request.

<sup>96</sup> Source: the official statistical data of the Ministry of Justice available upon request.

				Art. 52: <b>1</b> <sup>98</sup> Art. 53: <b>3</b> <sup>99</sup>	
	Deprivation of liberty		Art. 49 par. 1: <b>3</b> <sup>101</sup> Art. 49 par. 2: <b>0</b> <sup>102</sup> Art. 51 par. 1: <b>1</b> <sup>103</sup> Art. 51 par. 2: <b>0</b> <sup>104</sup> Art. 52: <b>1</b> <sup>105</sup> Art. 53: <b>0</b> <sup>106</sup>	Art. 49 par. 1: <b>4</b> <sup>107</sup> Art. 49 par. 2: <b>1</b> <sup>108</sup> Art. 51 par. 1: <b>0</b> <sup>109</sup> Art. 51 par. 2: <b>0</b> <sup>110</sup> Art. 52: <b>0</b> <sup>111</sup> Art. 53: <b>0</b> <sup>112</sup>	No data available
	Limitation of liberty		Art. 49 par. 1: <b>0</b> <sup>113</sup> Art. 49 par. 2: <b>0</b> <sup>114</sup> Art. 51 par. 1: <b>0</b> <sup>115</sup>	Art. 49 par. 1: <b>0</b> <sup>119</sup> Art. 49 par. 2:	No data available

<sup>97</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>100</sup> The data concerning the penalties sentenced in criminal proceedings were available upon request at the Ministry of Justice. However, the statistical data concerning 2011 have not been available yet.

<sup>98</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>99</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>101</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>102</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>103</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>104</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>105</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>106</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>107</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>108</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>109</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>110</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>111</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>112</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>113</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>114</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>115</sup> Source: the official statistical data of the Ministry of Justice available upon request.

			Art. 51 par. 2: <b>0</b> <sup>116</sup> Art. 52: <b>1</b> <sup>117</sup> Art. 53: <b>0</b> <sup>118</sup>	<b>0</b> <sup>120</sup> Art. 51 par. 1: <b>0</b> <sup>121</sup> Art. 51 par. 2: <b>0</b> <sup>122</sup> Art. 52: <b>0</b> <sup>123</sup> Art. 53: <b>0</b> <sup>124</sup>	
	All fines		Art. 49 par. 1: <b>2</b> <sup>125</sup> Art. 49 par. 2: <b>1</b> <sup>126</sup> Art. 51 par. 1: <b>5</b> <sup>127</sup> Art. 51 par. 2: <b>1</b> <sup>128</sup> Art. 52: <b>2</b> <sup>129</sup> Art. 53: <b>1</b> <sup>130</sup>	Art. 49 par. 1: <b>3</b> <sup>131</sup> Art. 49 par. 2: <b>0</b> <sup>132</sup> Art. 51 par. 1: <b>8</b> <sup>133</sup> Art. 51 par. 2: <b>2</b> <sup>134</sup> Art. 52: <b>1</b> <sup>135</sup>	No data available

<sup>119</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>116</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>117</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>118</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>120</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>121</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>122</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>123</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>124</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>125</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>126</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>127</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>128</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>129</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>130</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>131</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>132</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>133</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>134</sup> Source: the official statistical data of the Ministry of Justice available upon request.

				Art. 53: <b>3</b> <sup>136</sup>	
	Fine 301 PLN-500 PLN		Art. 49 par. 1: <b>0</b> <sup>137</sup> Art. 49 par. 2: <b>0</b> <sup>138</sup> Art. 51 par. 1: <b>0</b> <sup>139</sup> Art. 51 par. 2: <b>0</b> <sup>140</sup> Art. 52: <b>0</b> <sup>141</sup> Art. 53: <b>0</b> <sup>142</sup>	Art. 49 par. 1: <b>1</b> <sup>143</sup> Art. 49 par. 2: <b>0</b> <sup>144</sup> Art. 51 par. 1: <b>1</b> <sup>145</sup> Art. 51 par. 2: <b>1</b> <sub>146</sub> Art. 52: <b>0</b> <sup>147</sup> Art. 53: <b>1</b> <sup>148</sup>	No data available
	Fine 501-800		Art. 49 par. 1: <b>0</b> <sup>149</sup> Art. 49 par. 2: <b>1</b> <sup>150</sup> Art. 51 par. 1: <b>1</b> <sup>151</sup> Art. 51 par. 2: <b>0</b> <sup>152</sup> Art. 52: <b>0</b> <sup>153</sup>	Art. 49 par. 1: <b>0</b> <sup>155</sup> Art. 49 par. 2: <b>0</b> <sup>156</sup> Art. 51 par. 1:	No data available

<sup>135</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>136</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>137</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>138</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>139</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>140</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>141</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>142</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>143</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>144</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>145</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>146</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>147</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>148</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>149</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>150</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>151</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>152</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>153</sup> Source: the official statistical data of the Ministry of Justice available upon request.

			Art. 53: 0 <sup>154</sup>	1 <sup>157</sup> Art. 51 par. 2: 1 <sup>158</sup> Art. 52: 0 <sup>159</sup> Art. 53: 1 <sup>160</sup>	
	Fine 801-1000		Art. 49 par. 1: 1 <sup>161</sup> Art. 49 par. 2: 0 <sup>162</sup> Art. 51 par. 1: 1 <sup>163</sup> Art. 51 par. 2: 1 <sup>164</sup> Art. 52: 1 <sup>165</sup> Art. 53: 1 <sup>166</sup>	Art. 49 par. 1: 1 <sup>167</sup> Art. 49 par. 2: 0 <sup>168</sup> Art. 51 par. 1: 2 <sup>169</sup> Art. 51 par. 2: 0 <sup>170</sup> Art. 52: 0 <sup>171</sup> Art. 53: 0 <sup>172</sup>	No data available
	Fine 1001-		Art. 49 par. 1: 1 <sup>173</sup>	Art. 49 par. 1:	No data

<sup>155</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>156</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>154</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>157</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>158</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>159</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>160</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>161</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>162</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>163</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>164</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>165</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>166</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>167</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>168</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>169</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>170</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>171</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>172</sup> Source: the official statistical data of the Ministry of Justice available upon request.

	1501		Art. 49 par. 2: <b>0</b> <sup>174</sup> Art. 51 par. 1: <b>2</b> <sup>175</sup> Art. 51 par. 2: <b>0</b> <sup>176</sup> Art. 52: <b>0</b> <sup>177</sup> Art. 53: <b>0</b> <sup>178</sup>	<b>0</b> <sup>179</sup> Art. 49 par. 2: <b>0</b> <sup>180</sup> Art. 51 par. 1: <b>1</b> <sup>181</sup> Art. 51 par. 2: <b>0</b> <sup>182</sup> Art. 52: <b>0</b> <sup>183</sup> Art. 53: <b>0</b> <sup>184</sup>	available
	Fine 1501 - 2000		Art. 49 par. 1: <b>0</b> <sup>185</sup> Art. 49 par. 2: <b>0</b> <sup>186</sup> Art. 51 par. 1: <b>1</b> <sup>187</sup> Art. 51 par. 2: <b>0</b> <sup>188</sup> Art. 52: <b>0</b> <sup>189</sup> Art. 53: <b>0</b> <sup>190</sup>	Art. 49 par. 1: <b>1</b> <sup>191</sup> Art. 49 par. 2: <b>0</b> <sup>192</sup> Art. 51 par. 1: <b>2</b> <sup>193</sup>	No data available

<sup>173</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>174</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>175</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>176</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>177</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>178</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>179</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>180</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>181</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>182</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>183</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>184</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>185</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>186</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>187</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>188</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>189</sup><sup>189</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>190</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>191</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>192</sup> Source: the official statistical data of the Ministry of Justice available upon request.

				Art. 51 par. 2: <b>0</b> <sup>194</sup> Art. 52: <b>1</b> <sup>195</sup> Art. 53: <b>1</b> <sup>196</sup>	
	Fine 2001-5000		Art. 49 par. 1: <b>0</b> <sup>197</sup> Art. 49 par. 2: <b>0</b> <sup>198</sup> Art. 51 par. 1: <b>0</b> <sup>199</sup> Art. 51 par. 2: <b>0</b> <sup>200</sup> Art. 52: <b>0</b> <sup>201</sup> Art. 53: <b>0</b> <sup>202</sup>	Art. 49 par. 1: <b>0</b> <sup>203</sup> Art. 49 par. 2: <b>0</b> <sup>204</sup> Art. 51 par. 1: <b>1</b> <sup>205</sup> Art. 51 par. 2: <b>0</b> <sup>206</sup> Art. 52: <b>0</b> <sup>207</sup> Art. 53: <b>0</b> <sup>208</sup>	No data available

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<sup>193</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>194</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>195</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>196</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>197</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>198</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>199</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>200</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>201</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>202</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>203</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>204</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>205</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>206</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>207</sup> Source: the official statistical data of the Ministry of Justice available upon request.

<sup>208</sup> Source: the official statistical data of the Ministry of Justice available upon request.

## Detailed information

Redress Mechanism 1: **Complaint to the Inspector General for the Protection of Personal Data** (*Generalny Inspektor Ochrony Danych Osobowych*) on the basis of art. 12 of the Law on data protection, Official Journal 2002, No. 101, Item 926, with further changes, from 29 August 1997 (*Ustawa o ochronie danych osobowych*).

- **Range of possible outcomes:** According to the law, the Inspector General may control data processing conformity with the law *ex officio* or after a complaint has been lodged (art. 12 par.1) and issue decisions in that respect (art. 12 par. 2). According to art. 18 of the Law on data protection the decision may order the elimination of infringement (par. 1), order to complete, actualize, correct, facilitate or refuse to facilitate data (par. 2), order to secure collected data (par. 3), order the suspension of the transfer of data to a third country (par. 4), order to secure data or transfer the data to other subjects (par. 5), order to delete the data (par. 6).
- **Legal basis:** Art. 18 of the Law on data protection.
- **Type of procedure** Data protection authority.
- **Possibilities of appeal:** Possibility to appeal to the Inspector General (asking for review of his decision) and then to the Regional Administrative Court and the Supreme Administrative Court.
- **Burden of proof:** The complaint to the Inspector General should be accompanied with proof of data protection violations.
- **Available mechanism to lower the burden of proof:** The Inspector General is conducting the proceedings and verifying the way data is processed without the engagement of the party that lodged a complaint.
- **Requirement of legal representation:** The complainant does not need legal representation.
- **Free legal advice/representation:** Free legal advice on the application of the Law on data protection might be obtained at the Inspector General office and some civil society organizations. However, there are no non-governmental organization specializing in providing legal advices concerning exclusively the protection of personal data.
- **Civil society organisations active in procedure:** Civil Society organizations may lodge complaints with the Inspector General and intervene in the proceedings in conformity with art. 31 of the Code of Administrative Proceedings, Official Journal 2000, No. 98, Item 1071, with further changes, from 14 June 1960 (*Ustawa Kodeks postępowania administracyjnego*). However, the proceedings opened by the Inspector General on the civil society organization motion will be conducted *ex officio*.
- **Cost of procedure:** Proceedings before the Inspector General require a fee of 10 PLN (approx. 3 EUR)<sup>209</sup>.
- **Average duration of procedure:** The proceedings before the Inspector General may last up to 1 month or 2 months when the case is complicated.
- **Outcomes:** Data was received from the Inspector General office on a public information motion. In the given period only outcomes/decisions listed in art. 18 par. 1, 2, 4 and 6 occurred. The Inspector General ordered most often the removal of data or the elimination of the infringement.

Redress Mechanism 2: **Complaint to the Inspector General for the Protection of Personal Data for review of the previous decision** on the basis of art. 21 par. 1 of the Law on data

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<sup>209</sup> Information available at: [www.giodo.gov.pl/579/id\\_art/2683/j/pl/](http://www.giodo.gov.pl/579/id_art/2683/j/pl/) (28.05.2012).

protection. The complaint has to be lodged within 14 days after the initial decision was delivered.

- **Range of possible outcomes:** The Inspector General may maintain his decision, reverse his decision, reverse the decision partially or reverse the decision and refuse the complaint, reverse the decision and discontinue the proceedings.
- **Legal basis:** Art. 21 par. 1 and art. 18 of the Law on data protection.
- **Type of procedure** Data protection authority.
- **Possibilities of appeal:** Possibility to appeal to the Regional Administrative Court (*Wojewódzki Sąd Administracyjny*) and the Supreme Administrative Court (*Naczelny Sąd Administracyjny*).
- **Burden of proof:** The motion to review the previous decision by the Inspector General should be accompanied with proof of data protection violations.
- **Available mechanism to lower the burden of proof:** The Inspector General is conducting the proceedings and verifying the way data is processed without the engagement of the party that lodged a complaint.
- **Requirement of legal representation:** The complainant does not need legal representation.
- **Free legal advice/representation:** Free legal advice on the application of the Law on data protection might be obtained at the Inspector General office and some civil society organizations.
- **Civil society organisations active in procedure:** Civil Society organizations may intervene in the proceedings in conformity with art. 31 of the Code of Administrative Proceedings, Official Journal 2000, No. 98, Item 1071, with further changes, from 14 June 1960 (*Ustawa Kodeks postępowania administracyjnego*).
- **Cost of procedure:** The proceedings before the Inspector General are initiated only after a fee of 10 PLN (approx. 3 EUR) have been lodged<sup>210</sup>.
- **Average duration of procedure:** The proceedings before the Inspector General may last up to 1 month, 2 month where the case is complicated.
- **Outcomes:** Data was received from the Inspector General office on a public information motion. In most of the cases analyzed in the given period (approx. 90 % of the cases) the Inspector General maintained his previous decisions.

Redress Mechanism 3: **Motion for disciplinary sanctions** on the basis of art. 17 par. 2 of the Law on data protection.

- **Range of possible outcomes:** The Inspector General may lodge a motion to start disciplinary proceedings against a person which was responsible for data processing and failed to comply with the obligations resulting from the law.
- **Legal basis:** Art. 17 par. 2 of the Law on data protection.
- **Possibilities of appeal:** Disciplinary proceedings often based on the provision of the Code of Criminal Proceedings, which applies to them.
- **Burden of proof:** Data protection authority lodges a motion with the adequate disciplinary body.
- **Available mechanism to lower the burden of proof:** The disciplinary body will proceed with the case, the procedure will depend on the internal regulation of such a body.
- The Inspector General will need to prove the non compliance with the law while lodging the motion.

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<sup>210</sup> Information available at: [www.giodo.gov.pl/579/id\\_art/2683/j/pl/](http://www.giodo.gov.pl/579/id_art/2683/j/pl/) (28.05.2012).

- **Outcomes:** Data was received from the Inspector General office on a public information motion. In 2009 the Inspector General lodged 9 motions, in 2010 4 motions and in 2011 only 2 motions.

Redress Mechanism 4: **Introducing a complaint with administrative courts – Regional Administrative Court and the Supreme Administrative Court** on the basis of art. 21 par. 2 of the Law on data protection and art. 127 of the Code of Administrative Proceedings. The complaint has to be lodged within 14 days after the initial decision was delivered. The appeal from the decision of the first instance court should be made to the Supreme Administrative Court within 30 days (art. 177 par. 2 of the Law on the procedure before administrative courts, Official Journal 2002, No. 153, Item 1269, with further changes, from 25 July 2002 (*Ustawa Prawo o ustroju sądów powszechnych*)).

- **Range of possible outcomes:** The administrative courts control the decision of the Inspector General, it may change it or reject the complaint.
- **Legal basis:** Art. 127 of the Code of Administrative Proceedings and art. 173-193 of the Law on the procedure before administrative courts.
- **Type of procedure:** Administrative proceedings.
- **Possibilities of appeal:** The Regional Administrative Court is the first instance, the Supreme Administrative Court is the second instance.
- **Burden of proof:** The burden of proof lies with the administrative authority (Inspector General).
- **Requirement of legal representation:** Before administrative courts the complainant may lodge a complaint and act alone, the complaint to the Supreme Administrative Court should be made by an advocate or legal council (art. 175 par. 1 of the Law on the procedure before administrative courts). Legal entities may be represented by a representative of their own choice (art. 28 par. 1 of the Law on the procedure before administrative courts).
- **Free legal advice/representation:** Complainant who does not possess sufficient financial means may request an *ex officio* legal representation (art. 243-263 of the Law on the procedure before administrative courts); an official form must be filled by the complainant.
- **Civil society organisations active in procedure:** Civil society organization may intervene in the proceedings on the basis of art. 9 of the Law on the procedure before administrative courts. The Inspector General, in data protection cases, is a party of the proceedings.
- **Cost of procedure:** Lodging a complaint with the administrative court requires paying the fee of 200 PLN (approx. 50 EUR) and to the Supreme Court 100 PLN (20 EUR). The fees are regulated in a Regulation of the Committee of Ministers on the amount and the collection of fees in administrative proceedings, Official Journal 2003 No. 221, Item 2193 with further changes, from 24 December 2003 (*Rozporządzenie w sprawie wysokości oraz szczegółowych zasad pobierania wpisu w postępowaniu przed sądami administracyjnymi*). The party, on the basis of art. 243-263 of the Law on the procedure before administrative courts may claim to be exonerated from court fees (in case of lack of sufficient financial means). The costs of opinions, expertise will be covered both by the party and the administrative organ (Inspector General).

- **Average duration of procedure:** The majority of cases in regional administrative courts are adjudicated within 6-12 months, before the Supreme Administrative Court the majority of cases was adjudicated in the period of 12-24 months<sup>211</sup>.
- **Outcomes:** The statistic data is available at the Supreme Court web page in the yearly statistics repertory<sup>212</sup>. In 2009 73 complaints concerning data protection were lodged with the administrative courts, in 2010 – 67, in 2011 – 91. In 2009 – 36 complaints were rejected, in 2010 – 51 and in 2011 – 78. The high amount of complaints being rejected results from the fact that many of them are manifestly ill-founded or are lodged with the court without first passing through the Inspector General, the administrative body responsible for data violation cases.

Redress Mechanism 5: **Civil complaint for the protection of personal rights based on art. 23-24 of the Civil Code**, Official Journal 1964, No. 16, Item 93 with further changes from 23 April 1964 (*Ustawa Kodeks cywilny*).

- **Range of possible outcomes:** The plaintiff may receive compensation (in the given period the range of compensation was between 5000 PLN (approx. 1200 EUR) and 50000 PLN (approx. 12000 EUR). The compensation may be devoted to a public goal or institution.
- **Legal basis:** Art. 23-24 of the Civil Code. The person may claim infringement of personal goods or violation of the right to privacy in connection with processing of the personal data.
- **Type of procedure** Civil proceedings.
- **Possibilities of appeal:** The complaint is lodged with the regional court and there is a possibility of appeal to the appellate court. There is a possibility to lodge a cassation appeal if the amount of compensation is higher than 50,000 PLN (approx. 12,000 EUR) – no such a complaint was registered in the given period.
- **Burden of proof:** According to Article 6 of the Civil Code, as a general rule, the burden of proof lies with the party which benefits from the proceedings. However, in cases based on art. 23-24 of the Civil Code the defendant needs to prove that his activity was legal and that there were circumstances which justified the interference with the privacy. Therefore, the burden of proof will lie with the defendant.
- **Requirement of legal representation:** There is no requirement of professional legal representation in civil proceedings. A professional legal representation is required while lodging the cassation appeal (Article 117 of the Code of Civil Proceedings, Official Journal 1964, No. 43, Item 296 with further changes from 17 November 1964 (*Ustawa Kodeks postępowania cywilnego*)).
- **Free legal advice/representation:** The plaintiff may request an *ex officio* legal aid if he does not have sufficient financial means (art. 117-124 of the Code of Civil Proceedings).
- **Civil society organisations active in procedure:** Civil society organizations may take part in the proceedings as third parties (art. 61-62 of the Code of Civil Proceedings).
- **Cost of procedure:** The fee of introducing a complaint is 5% of the amount of compensation requested in the complaint (art. 13 of the Law on costs of civil proceedings, Official Journal 2005, No. 90, Item 594 with further changes from 28 July 2005 (*Ustawa o kosztach sądowych w sprawach cywilnych*)). While introducing

<sup>211</sup> Statistics available at: [www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA](http://www.nsa.gov.pl/index.php/pol/NSA/Statystyki-NSA) (29.05.2012), however, no specific statistics are provided for data protection cases only.

<sup>212</sup> <http://bip.nsa.gov.pl/index.php/bip/BIP/Statystyka/Statystyki-NSA-format-excel-.xls2> (29.05.2012).

an appeal the plaintiff would need to pay 40 PLN (approx. 10 EUR) of fees. The plaintiff may request the exemption from costs (art. 117-124 of the Code of Civil Proceedings). The party which loses the proceedings is bound to refund the costs of the proceedings to the winning party (art. 98 of the Code of Civil Proceedings).

- **Average duration of procedure:** There are no statistics available as to the length of civil proceedings for privacy protection. However, the overall proceedings in civil matters lasted in 2011 in regional courts from 3 months to 36 months (however, 2862 cases were pending up to 5 years) and in appellate courts from 3 months to 24 months. In 2010 in regional courts the proceedings lasted from 3 months to 24 months (however, 2321 cases were pending up to 3 years and 1292 up to 5 years) and in appellate courts from 3 months to 36 months. In 2009 in regional courts the proceedings lasted from 3 months to 50 months and in appellate courts from 3 months to 24 months<sup>213</sup>.
- **Outcomes:** Neither the Ministry of Justice, nor courts collect data on data protection complaints. The collected statistics were received at the Ministry of Justice and by addressing public information motion to all regional and appellate court. The responses, which we obtained upon the public information, show that few complaints for data protection are lodged in civil proceedings. In regional courts in 2009-2011 13 judgments were delivered. In the appellate courts 18 judgments were delivered in the given period.

**Redress Mechanism 6: Lodging a criminal complaint to the prosecution authority by the Inspector General** on the basis of art. 19 of the Law on data protection **and prosecution authorities investigations** on the basis art. 49, 51, 52 and 53 of the Law on data protection.

- **Range of possible outcomes:** Criminal proceedings might be opened against a person violating personal data by a prosecutor after a notification has been made by the victim or the Inspector General.
- **Legal basis:** Article 49, 51, 52 and 53 of the Law on data protection.
- **Type of procedure:** Criminal proceedings (pre-trial).
- **Possibilities of appeal:** If the prosecution denies to open pre-trial proceedings the person lodging the notification may lodge an appeal with the Appellate Prosecution (art. 306 of the Code of Criminal Proceedings, Official Journal 1997, No. 89, Item 555 with further changes from 6 June 1997 (*Ustawa Kodeks postępowania karnego*)).
- **Burden of proof:** The prosecution authorities are hosting the proceedings and are obliged to collect the proof.
- The person or institution lodging the notification should be informed about the outcome of the proceedings.
- **Cost of procedure:** Costs of pre-trial proceedings are borne by the State.
- **Average duration of procedure:** There are no statistics available as to the length of pre-trial proceedings based on the data protection law. Data is collected only as to all of the criminal proceedings conducted by the prosecution authorities. In the given period the majority of proceedings lasted from 3 to 12 months<sup>214</sup>.
- **Outcomes:** Data of the number of notification lodged by the Inspector General was received from the Inspector General upon public information motion. Data on the number of investigations opened and finished was received from the Office of the

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<sup>213</sup> These data are available upon request at the Ministry of Justice.

<sup>214</sup> Statistics available at the Prosecutor General web page: [www.pg.gov.pl/bip/index.php?0,813](http://www.pg.gov.pl/bip/index.php?0,813) (29.05.2012).

Prosecutor General upon public information motion. In 2009, 387 proceedings were opened (conform with the number of notifications) by the prosecution authorities and 332 resulted with lodging a bill of indictment. In 2010, 330 proceedings were opened by the prosecution authorities and 279 resulted with lodging a bill of indictment. In 2011, 317 proceedings were opened by the prosecution authorities and 106 resulted with lodging a bill of indictment.

Redress Mechanism 7: **Criminal proceedings** on the basis art. 49, 51, 52 and 53 of the Law on data protection.

- **Range of possible outcomes:** The person found guilty may be sentenced to a fine, limitation of liberty or deprivation of liberty (from 1 to 3 years depending on the offence).
- **Legal basis:** Art. 49, 51, 52 and 53 of the Law on data protection.
- **Type of procedure:** Criminal proceedings (court proceedings).
- **Possibilities of appeal:** From district court judgment there is a possibility of appeal to regional court under the Code of criminal proceedings. The Cassation appeal may be lodged only if the accused was sentence to deprivation of liberty (art. 523 of the Code of Criminal proceedings).
- **Burden of proof:** The burden of proof lies with the prosecutor.
- The victim of data violation may enter in the proceedings as an auxiliary prosecutor until the opening of court trial (art. 54 of the Code of Criminal proceedings). An auxiliary prosecutor acts like a party in the proceedings together with the public prosecution. If the prosecution denies twice to open proceedings and lodge a bill of indictment the victim may lodge a private bill of indictment and act in the proceedings as a subsidiary prosecutor (art. 54 of the Code of Criminal proceedings).
- **Requirement of legal representation:** The auxiliary prosecutor may act alone or have a professional representative (an *ex officio* legal aid may be provided if the auxiliary prosecutor have no sufficient means – art. 88 of the Code of Criminal proceedings).
- **Cost of procedure:** An auxiliary prosecutor does not bear the costs of the proceedings, the subsidiary prosecutor in case of innocence of the accused will bear the costs of the proceedings (art. 632 and 640 of the Code of Criminal proceedings).
- **Average duration of procedure:** There are no statistics as to the length of criminal proceedings in data protection cases, however, the average length of criminal proceedings in district court in the research period varied from 3 months to 2 years (with the majority of cases being adjudicated within 3 months). In regional courts proceedings lasted usually up to 12 months<sup>215</sup>.
- **Outcomes:** Data was received at the Ministry of Justice upon a motion on access to public data. No statistics are available yet as far as the number of persons sentenced in 2011 on the basis art. 49, 51, 52 and 53 of the Law on data protection. In 2010, only 22 persons were sentenced for data protection law violations, 17 persons were fined, 4 deprived of liberty. In 2009, 19 persons were found guilty, 12 were fined and 4 were deprived of liberty. The deprivation of liberty was never higher than 3 months. Fines ranged in the research period from 300 PLN (approx. 85 EUR) to 5000 PLN (approx. 1200 EUR).

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<sup>215</sup> Statistics received from the Ministry of Justice after a motion for public data.