

SLOVENIA

FRANET Contractor

Ad Hoc Information Report

Data protection: Redress mechanisms and their use

2012

Peace Institute, Institute for Contemporary Social and Political Studies

DISCLAIMER: The ad hoc information reports were commissioned as background material for the comparative report on *Access to Data Protection Remedies in EU Member States* by the European Union Agency for Fundamental Rights (FRA). They were prepared under contract by the FRA's research network FRANET. The views expressed in the ad hoc information reports do not necessarily reflect the views or the official position of the FRA. These reports are made publicly available for information purposes only and do not constitute legal advice or legal opinion.

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	fine	Local court/ Criminal Law Department (In Slovenia, Local and District Courts are general first instance courts. According to the Courts Act, Local Courts hear cases punishable by a fine or imprisonment for up to three years. District Courts review cases in which imprisonment for more than three years may be imposed.)	a) Penal Code (Kazenski zakonik, KZ) in force until November 2008 – Section 16 – Criminal offences against human rights and liberties/ Article 154 Abuse of personal data - 0 persons ¹ b) Penal Code (Kazenski zakonik, KZ-1) in force from November 2008 – Section 16 – Criminal offences against human rights and liberties/ Article 143 Abuse of personal data	a) Penal Code (Kazenski zakonik, KZ) in force until November 2008 – Section 16 – Criminal offences against human rights and liberties/ Article 154 Abuse of personal data - 0 persons ³ b) Penal Code (Kazenski zakonik, KZ-1) in force from November 2008 – Section 16 – Criminal offences against human rights and liberties/	a) Penal Code (Kazenski zakonik, KZ) in force until November 2008 – Section 16 – Criminal offences against human rights and liberties/ Article 154 Abuse of personal data - Data shall be available at a later stage. b) Penal Code (Kazenski zakonik, KZ-1) in force from November 2008 – Section 16 – Criminal offences

¹ Data extracted from the SI-STAT data portal, a database kept by the Statistical Office of the Republic of Slovenia (Statistični urad Republike Slovenije, SURS). See: <http://pxweb.stat.si/pxweb/Database/Demographics/Demographics.asp> For methodological considerations, please see: www.stat.si/doc/metod_pojasnila/13-046-ME.htm For example, observation units are perpetrators of criminal offences. All hyperlinks were accessed on 31 May 2012.

			- 0 persons ²	Article 143 Abuse of personal data - 0 persons ⁴	against human rights and liberties/ Article 143 Abuse of personal data - Data shall be available at a later stage
2	imprisonment	Local court/ Criminal Law Department (In Slovenia, Local and District Courts are general first instance courts. According to the Courts Act, Local Courts hear cases punishable by a fine or imprisonment for up to three years. District Courts review cases in which imprisonment for more than three years may be imposed. Local Courts observe procedures in all cases governed	a) Penal Code (Kazenski zakonik, KZ) in force until November 2008 – Section 16 – Criminal offences against human rights and liberties/ Article 154 Abuse of personal data - 2 persons ⁵ b) Penal Code (Kazenski zakonik, KZ-1) in force from November 2008 – Section 16 – Criminal offences	a) Penal Code (Kazenski zakonik, KZ) in force until November 2008 – Section 16 – Criminal offences against human rights and liberties/ Article 154 Abuse of personal data - 0 persons ⁷ b) Penal Code (Kazenski zakonik, KZ-1) in force from November 2008 –	a) Penal Code (Kazenski zakonik, KZ) in force until November 2008 – Section 16 – Criminal offences against human rights and liberties/ Article 154 Abuse of personal data - Data shall be available at a later stage. b) Penal Code (Kazenski zakonik, KZ-1) in force

³ Data extracted from the SI-STAT data portal, a database kept by the Statistical Office of the Republic of Slovenia (Statistični urad Republike Slovenije, SURS). See: <http://pxweb.stat.si/pxweb/Database/Demographics/Demographics.asp> For example, observation units are perpetrators of criminal offences.

² Data extracted from the SI-STAT data portal, a database kept by the Statistical Office of the Republic of Slovenia (Statistični urad Republike Slovenije, SURS). See: <http://pxweb.stat.si/pxweb/Database/Demographics/Demographics.asp> For methodological considerations, please see: www.stat.si/doc/metod_pojasnila/13-046-ME.htm For example, observation units are perpetrators of criminal offences.

⁴ Data extracted from the SI-STAT data portal, a database kept by the Statistical Office of the Republic of Slovenia (Statistični urad Republike Slovenije, SURS). See: <http://pxweb.stat.si/pxweb/Database/Demographics/Demographics.asp> For methodological considerations, please see: www.stat.si/doc/metod_pojasnila/13-046-ME.htm For example, observation units are perpetrators of criminal offences.

⁵ Data extracted from the SI-STAT data portal, a database kept by the Statistical Office of the Republic of Slovenia (Statistični urad Republike Slovenije, SURS). See: <http://pxweb.stat.si/pxweb/Database/Demographics/Demographics.asp> For methodological considerations, please see: www.stat.si/doc/metod_pojasnila/13-046-ME.htm For example, observation units are perpetrators of criminal offences. All hyperlinks were accessed on 31 May 2012.

		by the former and the current Penal Code, but in cases covered by Art. 143, Para.5 of the Penal Code currently in force. Only in cases captured by the latter provision, imprisonment may exceed three years. As no such a case was recorded in the period covered by this report, please note that data presented in the next columns pertain to cases heard by Local Courts.)	against human rights and liberties/ Article 143 Abuse of personal data - 2 persons ⁶	Section 16 – Criminal offences against human rights and liberties/ Article 143 Abuse of personal data - 3 persons ⁸	from November 2008 – Section 16 – Criminal offences against human rights and liberties/ Article 143 Abuse of personal data - Data shall be available at a later stage
3	compensation	Local court/ Criminal Law Department (In Slovenia, Local and District Courts are general first instance courts. According to the Courts Act, Local Courts hear cases punishable by a fine or imprisonment for up to three years. District	a) Penal Code (Kazenski zakonik, KZ) in force until November 2008 – Section 16 – Criminal offences against human rights and liberties/ Article 154 Abuse of personal data - No data available. ⁹	a) Penal Code (Kazenski zakonik, KZ) in force until November 2008 – Section 16 – Criminal offences against human rights and liberties/ Article 154 Abuse of personal data	a) Penal Code (Kazenski zakonik, KZ) in force until November 2008 – Section 16 – Criminal offences against human rights and liberties/ Article 154 Abuse of personal data

⁷ Data extracted from the SI-STAT data portal, a database kept by the Statistical Office of the Republic of Slovenia (Statistični urad Republike Slovenije, SURS). See: <http://pxweb.stat.si/pxweb/Database/Demographics/Demographics.asp> For example, observation units are perpetrators of criminal offences.

⁶ Data extracted from the SI-STAT data portal, a database kept by the Statistical Office of the Republic of Slovenia (Statistični urad Republike Slovenije, SURS). See: <http://pxweb.stat.si/pxweb/Database/Demographics/Demographics.asp> For methodological considerations, please see: www.stat.si/doc/metod_pojasnila/13-046-ME.htm For example, observation units are perpetrators of criminal offences.

⁸ Data extracted from the SI-STAT data portal, a database kept by the Statistical Office of the Republic of Slovenia (Statistični urad Republike Slovenije, SURS). See: <http://pxweb.stat.si/pxweb/Database/Demographics/Demographics.asp> For methodological considerations, please see: www.stat.si/doc/metod_pojasnila/13-046-ME.htm For example, observation units are perpetrators of criminal offences.

		Courts review cases in which imprisonment for more than three years may be imposed.)	b) Penal Code (Kazenski zakonik, KZ-1) in force from November 2008 – Section 16 – Criminal offences against human rights and liberties/ Article 143 Abuse of personal data - No data available.¹⁰	- No data available.¹¹ b) Penal Code (Kazenski zakonik, KZ-1) in force from November 2008 – Section 16 – Criminal offences against human rights and liberties/ Article 143 Abuse of personal data - No data available.¹²	- No data available.¹³ b) Penal Code (Kazenski zakonik, KZ-1) in force from November 2008 – Section 16 – Criminal offences against human rights and liberties/ Article 143 Abuse of personal data - No data available.¹⁴
4	compensation	Local or District Courts/ Civil Law Department (According to the Civil Procedure Act, Local Courts	No data available.¹⁵	No data available.¹⁶	No data available.¹⁷

⁹ Information was provided by the Ministry of Justice and Public Administration (Ministrstvo za pravosodje in javno upravo, MPJU) and the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije) upon request.

¹⁰ Information was provided by the Ministry of Justice and Public Administration (Ministrstvo za pravosodje in javno upravo, MPJU) and the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije) upon request.

¹¹ Information was provided by the Ministry of Justice and Public Administration (Ministrstvo za pravosodje in javno upravo, MPJU) and the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije) upon request.

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¹³ Information was provided by the Ministry of Justice and Public Administration (Ministrstvo za pravosodje in javno upravo, MPJU) and the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije) upon request.

¹⁴ Information was provided by the Ministry of Justice and Public Administration (Ministrstvo za pravosodje in javno upravo, MPJU) and the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije) upon request.

¹⁵ Information was provided by the Ministry of Justice and Public Administration (Ministrstvo za pravosodje in javno upravo, MPJU) and the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije) upon request.

¹⁶ Information was provided by the Ministry of Justice and Public Administration (Ministrstvo za pravosodje in javno upravo, MPJU) and the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije) upon request.

¹⁷ Information was provided by the Ministry of Justice and Public Administration (Ministrstvo za pravosodje in javno upravo, MPJU) and the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije) upon request.

		observe disputes when the value of dispute does not exceed Euro 20,000. District Courts adjudicate in disputes when the value of dispute exceeds Euro 20,000.)			
5	Right of the individual to information (i.e. access to data): - access to data; - administrative decision; - fine, etc.	Data Protection authority/ Information Commissioner	70 complaints ¹⁸	85 complaints ¹⁹	85 complaints ²⁰
6	Minor offences procedure: - fine; -caution; - warning; - payment order	Data Protection authority/ Information Commissioner	163 procedures ²¹	179 procedures ²²	136 procedures ²³
7	warnings in relation to minor violations, regulatory or administrative decisions ordering rectification of established regularities and imposing	Data Protection authority/ Information Commissioner	22 warnings and 17 decisions issued to legal persons in public sector; 44 warnings and 30 decisions issued to legal persons in	23 warnings and 34 decisions issued to legal persons in public sector; 31 warnings and 51 decisions issued to	11 warnings and 23 decisions issued to legal persons in public sector; 27 warnings and 56 decisions issued to

¹⁸ Informacijski pooblaščenec (2010) *Letno poročilo Informacijskega pooblaščenca za leto 2009*, Ljubljana, Informacijski pooblaščenec, p. 43.

¹⁹ Informacijski pooblaščenec (2011) *Letno poročilo Informacijskega pooblaščenca za leto 2010*, Ljubljana, Informacijski pooblaščenec, p. 44.

²⁰ Informacijski pooblaščenec (2012) *Letno poročilo Informacijskega pooblaščenca za leto 2011*, Ljubljana, Informacijski pooblaščenec, p. 46.

²¹ Informacijski pooblaščenec (2010) *Letno poročilo Informacijskega pooblaščenca za leto 2009*, Ljubljana, Informacijski pooblaščenec, p. 33.

²² Informacijski pooblaščenec (2011) *Letno poročilo Informacijskega pooblaščenca za leto 2010*, Ljubljana, Informacijski pooblaščenec, p. 33.

²³ Informacijski pooblaščenec (2012) *Letno poročilo Informacijskega pooblaščenca za leto 2011*, Ljubljana, Informacijski pooblaščenec, p. 35.

	measures, including immediate measures		private sector²⁴	legal persons in private sector²⁵	legal persons in private sector²⁶
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Detailed information

Redress Mechanism Number 1 (fine):

- Range of possible outcomes

a) Penal Code in force until November 2008 (Kazenski zakonik, KZ):

By the law, a fine shall be imposed in daily instalments or, when this is not possible, in a one-off amount. When the fine is imposed in daily instalments, it can range from a minimum of five to a maximum of 360 daily instalments, while for criminal offences committed for one's own interest it may total a maximum of 1,500 daily instalments. The court shall fix the daily amount by taking into account the perpetrator's daily income computed on the basis of three months' net salary and other incomes, as well as with respect to his family expenditure. The lowest daily amount shall amount to one sixtieth of the last officially published average monthly net salary in the Republic of Slovenia per employee, while the highest shall amount to one third thereof.

When the fine is imposed in a one-off amount, the minimum amount may not be lower than the then SIT 30,000 (app. Euro 125) and the maximum amount may not be higher than the then SIT 3,000,000 (app. Euro 12,519), while for criminal offences committed for one's own interest, it may not be higher than the then SIT 9,000,000 (app. Euro 37,556).²⁷

b) Penal Code in force from November 2008 (Kazenski zakonik, KZ-1):

A fine shall be imposed in daily instalments and may amount to minimum 30 and maximum 360 daily instalments, while for criminal offences committed for one's own interest it may amount to maximum 1,500 daily instalments. The number of daily amounts shall be fixed by the court in accordance with the general rules on sentencing. The court shall fix the daily amount by taking into account the perpetrator's daily income with regard to the official data of the tax authority as well as with respect to his family expenditure.²⁸

- Legal basis:

a) Penal Code in force until November 2008 (Kazenski zakonik, KZ) – Chapter 3: Sentences/ Article 38 in conjunction with Article 154 prohibiting the abuse of personal data²⁹

²⁴ Informacijski pooblaščenec (2010) *Letno poročilo Informacijskega pooblaščenca za leto 2009*, Ljubljana, Informacijski pooblaščenec, pp. 31-32.

²⁵ Informacijski pooblaščenec (2011) *Letno poročilo Informacijskega pooblaščenca za leto 2010*, Ljubljana, Informacijski pooblaščenec, p. 31-32.

²⁶ Informacijski pooblaščenec (2012) *Letno poročilo Informacijskega pooblaščenca za leto 2011*, Ljubljana, Informacijski pooblaščenec, p. 33-34.

²⁷ Slovenia, The Penal Code of the Republic of Slovenia, Official consolidated text (*Kazenski zakonik Republike Slovenije, Uradno prečiščeno besedilo, KZ*), 17 June 2004.

²⁸ Slovenia, The Penal Code (*Kazenski zakonik, KZ-1*), 20 May 2008. (and subsequent modifications)

²⁹ Slovenia, The Penal Code of the Republic of Slovenia, Official consolidated version (*Kazenski zakonik Republike Slovenije, Uradno prečiščeno besedilo, KZ*), 17 June 2004.

b) Penal Code in force from November 2008 (*Kazenski zakonik, KZ-1*) – Chapter 4: Sentences/ Article 47 in conjunction with Article 143 banning the abuse of personal data.³⁰ In late 2011, Article 47 was amended. As the amendments in question took place in 2012, the former provisions are presented in the preceding point. According to the provisions currently in force, a fine shall be imposed as a number of daily instalments payable by the offender multiplied by the amount of daily instalments. This amount shall be decided by the court upon observing financial circumstances of the offender. The number of daily instalments may range from 10 to 360 daily instalments, while for criminal offences committed for one's own interest it may total a maximum of 1,500 daily instalments. The court shall determine the amount of daily instalments with regard to offender's financial situation, based on data on their earnings, other income, the value of their assets, the average costs of their livelihood and their family obligations.³¹

- Type of procedure: criminal

- Possibilities of appeal:

2nd – Higher Court (*Višje sodišče*), 3rd – Supreme Court (*Vrhovno sodišče*), 4th – Constitutional Court (*Ustavno sodišče*)

Against first instance judgment issued by the criminal court an appeal can be lodged to the Higher Court. The appeal has to be announced to the first instance court, at the latest in eight day since the verdict was pronounced. If the appeal is not announced, it is deemed that the eligible persons have renounced the right to lodge an appeal (Articles 368, Para. 1 and 2 of the Criminal Procedure Act).

Against the judgment of the Higher Court an appeal can be lodged to the Supreme Court of the Republic of Slovenia in 15 days since the judgment is served, however, only in the following instances, specified in Article 398, Para. 1 of the Criminal Procedure Act):³²

- if the second instance court issued a sentence of life imprisonment or imprisonment for 30 years, or if it confirmed the judgment of the first instance court which issued such sentences (not relevant in cases related to the abuse of personal data);
- if the second instance court on the basis of a public hearing established facts of the case different from those established by the first instance court, and based its judgment on these findings;
- if the second instance court found the defendant guilty by changing the judgment with which the first instance court found the defendant not guilty.

These two legal remedies (appeal to the Higher Court and the appeal to the Supreme Court) are considered to be regular legal remedies. After these appeals are used, the judgment is considered final. After the judgment becomes final, also a complaint to the Constitutional Court can be lodged in 60 days since the judgment is served. After the judgment becomes final there are additional legal remedies in place, called extraordinary legal remedies: renewal of procedure and claim for protection of legality.

- Burden of proof:

³⁰ Slovenia, The Penal Code (*Kazenski zakonik, KZ-1*), 20 May 2008.

³¹ Slovenia, The Act Amending the Penal Code (*Zakon o spremembah in dopolnitvah Kazenskega zakonika, KZ-1B*), 2 November 2011.

³² Slovenia, The Criminal Procedure Act, Official consolidated text (*Zakon o kazenskem postopku, Uradno prečiščeno besedilo, ZKP-UPB8*), 19 April 2012.

In criminal procedures burden of proof is on prosecutor's office which is responsible for prosecution of criminal matters in courts. Even if the criminal prosecution begins upon the proposal of the victim (i.e. in cases of crimes when the proposal of the victim is the necessary procedural precondition for the criminal prosecution to begin), burden of proof is on the prosecution. This changes in cases when the prosecution decides to withdraw the criminal indictment (i.e. when there are no sufficient evidence). In such case the victim has to be present at the hearing and declare whether or not he or she will continue with the prosecution as a private prosecutor (Article 19 and 62 of the Criminal Procedure Act). In such cases the burden of proof is transferred from the prosecutor's office to the victim as a prosecutor.³³

- Available mechanism to lower the burden of proof: for example presumption of fact or reversal of the burden of proof or lump sum compensation arrangement etc.

According to Article 161.a there is a possibility for the case to be settled within the alternative dispute resolution scheme. The procedure is defined in the Instruction on the settlement in criminal cases. The purpose of settlement is to conclude an agreement that encompasses moral and material compensation for the victim due to a committed crime. It can only be proposed in cases of crimes for which a foreseen punishment is monetary fine or imprisonment of up to three years. In such cases the facts of the case are not necessarily established and the burden of proof rules are not relevant.

Article 450.a of the Criminal Procedure Act defines the possibility of concluding plea bargaining agreements. The agreement can be concluded upon the proposal of the prosecutor, once the well-founded suspicion for a certain crime was established by the prosecutor's office. The facts of the case therefore do not need to be fully established in court, and if the defendant signs the agreement (and confesses the crime as described by the prosecutor's office), the facts of the case as described in the agreement are presumed as true.³⁴

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

The victim (complainant) with full legal capacity is not required to have legal representation in court and can be active on his own.

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

The victim of a crime does not automatically have the right to free legal aid or representation in the course of criminal procedure. Free legal aid is regulated by Free Legal Aid Act which sets conditions for the free legal aid to be approved. The victim has to meet the financial census set by this law and other conditions, such as that the matter is not apparently irrational, the matter is important for the financial and economic situation of a person, the matter is of life importance for the person, the matter is probably going to be successful etc. (Article 24 of the Free legal Aid Act). The request for free legal assistance is decided by the president of the competent district court or the president of specialised courts (labour court, administrative court) (Article 2). Free legal aid shall be provided by attorneys

³³ Slovenia, The Criminal Procedure Act, Official consolidated text (*Zakon o kazenskem postopku, Uradno prečiščeno besedilo, ZKP-UPB8*), 19 April 2012.

³⁴ Slovenia, The Criminal Procedure Act, Official consolidated text (*Zakon o kazenskem postopku, Uradno prečiščeno besedilo, ZKP-UPB8*), 19 April 2012.

who are entered in the Register of Attorneys pursuant to the legislation governing attorneyship, by law firms founded on the basis of the mentioned legislation, and by notaries in matters dealt with pursuant to the act governing notaries. (Article 29) It may include, among other things, legal advice surpassing initial legal advice; drawing up, verification and authentication of deeds on legal relations, facts and statements; advice and representation in out-of-court settlements; advice and representation before courts in the first and second instances; advice and representation involving extraordinary legal remedies; advice and representation involving constitutional appeal and from payment of the costs of judicial proceedings. (Article 26) The Free Legal Aid Act also provides for the provision of the initial free legal advice which shall be deemed to be the provision of the eligible person with an explanation as to their legal status in the matter and brief advice on the possibilities for an out-of-court settlement, the rights and obligations upon instituting proceedings, court competencies, procedural rules, costs and method of execution of the decision. (Article 25) Apart from attorneys, the latter may also be offered by individuals who perform not-for-profit services of free legal aid with the approval of the minister responsible for justice. (Article 29)³⁵

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

By law everyone has the duty to report a crime. This duty is particularly set forth for state officials who become aware of a crime in performing their public duties. However, once that the crime is reported, the complainants have no particular *locus standi* in the criminal procedure.

- Cost of procedure: please provide information on the average cost of the procedure
N/A – No such cases in 2009 and 2010. However, it is worthwhile noting that, in general, no such data are available.³⁶

- Average duration of procedure:
N/A – No such cases in 2009 and 2010. Data for 2011 shall be available at a later stage.

- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011

a) Penal Code in force until November 2008 (Kazenski zakonik, KZ):

In 2009, procedures against seven adults were concluded before the court senate, while, in 2010, there were five adults against whom procedures before the court senate were concluded. Both mentioned years saw no cases in which a fine was imposed. In 2009 and 2010, no juveniles were subject to such procedures.³⁷ Data for 2011 shall be available at a later stage.

b) Penal Code in force from November 2008 (Kazenski zakonik, KZ-1):

³⁵ Slovenia, The Free Legal Aid Act (*Zakon o brezplačni pravni pomoči, ZBPP*), 31 May 2001. (and subsequent modifications)

³⁶ Information was provided by the Ministry of Justice and Public Administration (Ministrstvo za pravosodje in javno upravo, MPJU) and the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije) upon request.

³⁷ Data extracted from the SI-STAT data portal, a database kept by the Statistical Office of the Republic of Slovenia (Statistični urad Republike Slovenije, SURS). See: <http://pxweb.stat.si/pxweb/Database/Demographics/Demographics.asp> For methodological considerations, please see: www.stat.si/doc/metod_pojasnila/13-046-ME.htm For example, observation units are perpetrators of criminal offences.

In 2009, procedures against two adults were concluded before the court senate, while, in 2010, there were four adults against whom procedures before the court senate were concluded. Both mentioned years saw no cases in which a fine was imposed. In 2009, no juveniles were subject to such procedures. In 2010, the court senate concluded procedure against one juvenile. The latter was sentenced with educational measures, namely instructions and prohibition, and no fine was imposed in this case.³⁸ Data for 2011 shall be available at a later stage.

Redress Mechanism Number 2 (imprisonment):

- Range of possible outcomes
 - a) Penal Code in force until November 2008 (Kazenski zakonik, KZ):
Up to two years of imprisonment.³⁹
 - b) Penal Code in force from November 2008 (Kazenski zakonik, KZ-1):
Up to five years of imprisonment.⁴⁰
- Legal basis:
 - a) Penal Code in force until November 2008 (Kazenski zakonik, KZ) – Chapter 16: Criminal Offences against human rights and liberties/ Article 154 prohibiting the abuse of personal data⁴¹

Abuse of Personal Data

Article 154

(1) Whoever unlawfully uses personal data, which may be kept only on the basis of the law or on the basis of the personal consent of the individual to whom the personal data relate, shall be punished by a fine or sentenced to imprisonment for not more than one year.

(2) Whoever breaks into a computer database in order to acquire personal data for his or a third person's use shall be punished in accordance with the preceding paragraph of the present article.

(3) If any offence from the preceding two paragraphs is committed by an official through the abuse of office or of official authority, such an official shall be sentenced to imprisonment for not more than two years.

- b) Penal Code in force from November 2008 (Kazenski zakonik, KZ-1) – Chapter 16: Criminal Offences against human rights and liberties/ Article 143 banning the abuse of personal data.⁴²

Abuse of Personal Data

Article 143

³⁸ Data extracted from the SI-STAT data portal, a database kept by the Statistical Office of the Republic of Slovenia (Statistični urad Republike Slovenije, SURS). See: <http://pxweb.stat.si/pxweb/Database/Demographics/Demographics.asp> For methodological considerations, please see: www.stat.si/doc/metod_pojasnila/13-046-ME.htm For example, observation units are perpetrators of criminal offences.

³⁹ Slovenia, The Penal Code of the Republic of Slovenia, Official consolidated text (*Kazenski zakonik Republike Slovenije, Uradno prečiščeno besedilo, KZ*), 17 June 2004.

⁴⁰ Slovenia, The Penal Code (*Kazenski zakonik, KZ-1*), 20 May 2008. (and subsequent modifications)

⁴¹ Slovenia, The Penal Code of the Republic of Slovenia, Official consolidated text (*Kazenski zakonik Republike Slovenije, Uradno prečiščeno besedilo, KZ*), 17 June 2004.

⁴² Slovenia, The Penal Code (*Kazenski zakonik, KZ-1*), 20 May 2008. (and subsequent modifications)

(1) Whoever unlawfully uses personal data, which may be kept only on the basis of the law or on the basis of the personal consent of the individual, to whom the personal data relate, shall be punished by a fine or sentenced to imprisonment for not more than one year.

(2) Whoever breaks into a computer database in order to acquire personal data for his or a third person's use shall be punished in accordance with the preceding paragraph.

(3) Whoever publishes on the World Wide Web or enables another person to publish personal data of victims of criminal offences, victims of violation of rights and liberties, protected witnesses, which are contained in judicial records of court proceedings, in which the presence of the public or witness identification or protected witnesses and personal records thereof related to the court proceeding was not allowed according to the law or court decision, on the basis of which these persons may be identified or are identifiable, shall be sentenced to imprisonment for not more than three years.

(4) Whoever assumes the identity of another person and under its name exploits their rights, gains property benefits or damages their personal dignity shall be sentenced to imprisonment between three months and three years.

(5) If any offence from the preceding paragraphs of this Article is committed by an official through the abuse of office or official authority, such an official shall be sentenced to imprisonment for not more than five years.

(6) The prosecution under paragraph 3 of this Article shall be initiated upon a complaint.

- Type of procedure: criminal

- Possibilities of appeal:

2nd – Higher Court (Višje sodišče), 3rd – Supreme Court (Vrhovno sodišče), 4th – Constitutional Court (Ustavno sodišče)

Against first instance judgment issued by the criminal court an appeal can be lodged to the Higher Court. The appeal has to be announced to the first instance court, at the latest in eight day since the verdict was pronounced. If the appeal is not announced, it is deemed that the eligible persons have renounced the right to lodge an appeal (Articles 368, Para. 1 and 2 of the Criminal Procedure Act).

Against the judgment of the Higher Court an appeal can be lodged to the Supreme Court of the Republic of Slovenia in 15 days since the judgment is served, however, only in the following instances, specified in Article 398, Para. 1 of the Criminal Procedure Act):⁴³

- if the second instance court issued a sentence of life imprisonment or imprisonment for 30 years, or if it confirmed the judgment of the first instance court which issued such sentences (not relevant in cases related to the abuse of personal data);
- if the second instance court on the basis of a public hearing established facts of the case different from those established by the first instance court, and based its judgment on these findings;
- if the second instance court found the defendant guilty by changing the judgment with which the first instance court found the defendant not guilty.

These two legal remedies (appeal to the Higher Court and the appeal to the Supreme Court) are considered to be regular legal remedies. After these appeals are used, the judgment is considered final. After the judgment becomes final, also a complaint to the Constitutional Court can be lodged in 60 days since the judgment is served. After the judgment becomes

⁴³ Slovenia, The Criminal Procedure Act, Official consolidated text (*Zakon o kazenskem postopku, Uradno prečiščeno besedilo, ZKP-UPB8*), 19 April 2012.

final there are additional legal remedies in place, called extraordinary legal remedies: renewal of procedure and claim for protection of legality.

- Burden of proof:

In criminal procedures burden of proof is on prosecutor's office which is responsible for prosecution of criminal matters in courts. Even if the criminal prosecution begins upon the proposal of the victim (i.e. in cases of crimes when the proposal of the victim is the necessary procedural precondition for the criminal prosecution to begin), burden of proof is on the prosecution. This changes in cases when the prosecution decides to withdraw the criminal indictment (i.e. when there are no sufficient evidence). In such case the victim has to be present at the hearing and declare whether or not he or she will continue with the prosecution as a private prosecutor (Article 19 and 62 of the Criminal Procedure Act). In such cases the burden of proof is transferred from the prosecutor's office to the victim as a prosecutor.⁴⁴

- Available mechanism to lower the burden of proof: for example presumption of fact or reversal of the burden of proof or lump sum compensation arrangement etc.

According to Article 161.a there is a possibility for the case to be settled within the alternative dispute resolution scheme. The procedure is defined in the Instruction on the settlement in criminal cases. The purpose of settlement is to conclude an agreement that encompasses moral and material compensation for the victim due to a committed crime. It can only be proposed in cases of crimes for which a foreseen punishment is monetary fine or imprisonment of up to three years. In such cases the facts of the case are not necessarily established and the burden of proof rules are not relevant.

Article 450.a of the Criminal Procedure Act defines the possibility of concluding plea bargaining agreements. The agreement can be concluded upon the proposal of the prosecutor, once the well-founded suspicion for a certain crime was established by the prosecutor's office. The facts of the case therefore do not need to be fully established in court, and if the defendant signs the agreement (and confesses the crime as described by the prosecutor's office), the facts of the case as described in the agreement are presumed as true.⁴⁵

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

The victim (complainant) with full legal capacity is not required to have legal representation in court and can be active on his own.

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

The victim of a crime does not automatically have the right to free legal aid or representation in the course of criminal procedure. Free legal aid is regulated by Free Legal Aid Act which sets conditions for the free legal aid to be approved. The victim has to meet the financial census set by this law and other conditions, such as that the matter is not apparently irrational, the matter is important for the financial and economic situation of a person, the matter is of life importance for the person, the matter is probably going to be successful etc. (Article 24 of the Free legal Aid Act). The request for free legal assistance is

⁴⁴ Slovenia, The Criminal Procedure Act, Official consolidated text (*Zakon o kazenskem postopku, Uradno prečiščeno besedilo, ZKP-UPB8*), 19 April 2012.

⁴⁵ Slovenia, The Criminal Procedure Act, Official consolidated text (*Zakon o kazenskem postopku, Uradno prečiščeno besedilo, ZKP-UPB8*), 19 April 2012.

decided by the president of the competent district court or the president of specialised courts (labour court, administrative court) (Article 2). Free legal aid shall be provided by attorneys who are entered in the Register of Attorneys pursuant to the legislation governing attorneyship, by law firms founded on the basis of the mentioned legislation, and by notaries in matters dealt with pursuant to the act governing notaries. (Article 29) It may include, among other things, legal advice surpassing initial legal advice; drawing up, verification and authentication of deeds on legal relations, facts and statements; advice and representation in out-of-court settlements; advice and representation before courts in the first and second instances; advice and representation involving extraordinary legal remedies; advice and representation involving constitutional appeal and from payment of the costs of judicial proceedings. (Article 26) The Free Legal Aid Act also provides for the provision of the initial free legal advice which shall be deemed to be the provision of the eligible person with an explanation as to their legal status in the matter and brief advice on the possibilities for an out-of-court settlement, the rights and obligations upon instituting proceedings, court competencies, procedural rules, costs and method of execution of the decision. (Article 25) Apart from attorneys, the latter may also be offered by individuals who perform not-for-profit services of free legal aid with the approval of the minister responsible for justice. (Article 29)⁴⁶

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

By law everyone has the duty to report a crime. This duty is particularly set forth for state officials who become aware of a crime in performing their public duties. However, once that the crime is reported, the complainants have no particular *locus standi* in the criminal procedure.

- Cost of procedure: please provide information on the average cost of the procedure
No data available.⁴⁷

- Average duration of procedure:

In Slovenia, only data on duration of procedures from criminal charges to the final judgment involving convicted individuals are available.

- a) Penal Code in force until November 2008 (Kazenski zakonik, KZ):

In 2009, there were two such procedures involving adults. The length of a procedure under Para. 1, Article 154 was between one and two months, while the other procedure under Para. 3, Article 154 lasted over a year. In 2010, no such cases were recorded.⁴⁸ Data for 2011 shall be available at a later stage.

- b) Penal Code in force from November 2008 (Kazenski zakonik, KZ-1):

Year 2009 saw two such procedures against adult defendants. The procedure under Para.3, Article 143 lasted between four and six months, while duration of the procedure under Para.

⁴⁶ Slovenia, The Free Legal Aid Act (*Zakon o brezplačni pravni pomoči, ZBPP*), 31 May 2001. (and subsequent modifications)

⁴⁷ Information was provided by the Ministry of Justice and Public Administration (Ministrstvo za pravosodje in javno upravo, MPJU) and the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije) upon request.

⁴⁸ Data extracted from the SI-STAT data portal, a database kept by the Statistical Office of the Republic of Slovenia (Statistični urad Republike Slovenije, SURS). See: <http://pxweb.stat.si/pxweb/Database/Demographics/Demographics.asp> For methodological considerations, please see: www.stat.si/doc/metod_pojasnila/13-046-ME.htm For example, observation units are perpetrators of criminal offences.

4, Article 143 was between two and six months. In 2010, there were three such procedures, all under Para. 4, Article 143. Duration of one procedure was between four and six months, while two adults faced procedures lasting between two and four months. In 2009, no juveniles were subject to such procedures. In 2010, the court senate concluded procedure against one juvenile. The latter was sentenced with educational measures, namely instructions and prohibition, and no prison sentence was imposed in this case. Duration of this procedure was between six months and one year.⁴⁹ Data for 2011 shall be available at a later stage.

- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011

a) Penal Code in force until November 2008 (Kazenski zakonik, KZ):

In 2009, procedures against seven adults were concluded before the court senate, while, in 2010, there were five adults against whom procedures before the court senate were concluded. In 2009, two adult persons (a male and a female) were sentenced with suspended imprisonment of up to 30 days under Para.1, Article 154. In 2010, no such cases were recorded.⁵⁰ Data for 2011 shall be available at a later stage.

b) Penal Code in force from November 2008 (Kazenski zakonik, KZ-1):

In 2009, procedures against two adults were concluded before the court senate, while, in 2010, there were four adults against whom procedures before the court senate were concluded. In 2009, one adult was sentenced with imprisonment ranging from 1 to 2 months under Para. 3, Article 143, while one adult received prison sentence amounting from three to six months under Para.4, Article 143. In 2010, three adults were sentenced with imprisonment ranging from three to six months, respectively, under Para.4, Article 143. All persons found guilty in 2009 and 2010 were male, and all received suspended sentences. In 2009, no juveniles were subject to such procedures. In 2010, the court senate concluded procedure against one juvenile. The latter was sentenced with educational measures, namely instructions and prohibition, and no prison sentence was imposed in this case.⁵¹ Data for 2011 shall be available at a later stage.

Redress Mechanism Number 3 (Compensation):

- Range of possible outcomes

The amount of compensation awarded is not prescribed by law.

- Legal basis:

⁴⁹ Data extracted from the SI-STAT data portal, a database kept by the Statistical Office of the Republic of Slovenia (Statistični urad Republike Slovenije, SURS). See: <http://pxweb.stat.si/pxweb/Databse/Demographics/Demographics.asp> For methodological considerations, please see: www.stat.si/doc/metod_pojasnila/13-046-ME.htm For example, observation units are perpetrators of criminal offences.

⁵⁰ Data extracted from the SI-STAT data portal, a database kept by the Statistical Office of the Republic of Slovenia (Statistični urad Republike Slovenije, SURS). See: <http://pxweb.stat.si/pxweb/Databse/Demographics/Demographics.asp> For methodological considerations, please see: www.stat.si/doc/metod_pojasnila/13-046-ME.htm For example, observation units are perpetrators of criminal offences.

⁵¹ Data extracted from the SI-STAT data portal, a database kept by the Statistical Office of the Republic of Slovenia (Statistični urad Republike Slovenije, SURS). See: <http://pxweb.stat.si/pxweb/Databse/Demographics/Demographics.asp> For methodological considerations, please see: www.stat.si/doc/metod_pojasnila/13-046-ME.htm For example, observation units are perpetrators of criminal offences.

Criminal Procedure Act - Chapter 10: Claims for indemnification⁵²

- Type of procedure: criminal

If the compensation is claimed in the criminal procedure, this is still part of the criminal procedure. Although it has a special name, namely *premoženjskopravni zahtev* (*claims for indemnification*), the same substantial rules are used for determining the amount of compensation as in the civil courts. Other outcomes that can be similarly claimed as compensation within the criminal procedure are for a certain agreement to be annulled or objects to be returned, if these two claims are connected to the crime that is subject to prosecution. (Article 100, Para 2 of the Criminal Procedure Act)⁵³

- Possibilities of appeal: 2nd, 3rd and further instances
2nd – Higher Court (Višje sodišče), 3rd – Supreme Court (Vrhovno sodišče), 4th – Constitutional Court (Ustavno sodišče)

Against first instance judgment issued by the criminal court an appeal can be lodged to the Higher Court. The appeal has to be announced to the first instance court, at the latest in eight day since the verdict was pronounced. If the appeal is not announced, it is deemed that the eligible persons have renounced the right to lodge an appeal (Articles 368, Para. 1 and 2 of the Criminal Procedure Act).

Against the judgment of the Higher Court an appeal can be lodged to the Supreme Court of the Republic of Slovenia in 15 days since the judgment is served, however, only in the following instances, specified in Article 398, Para. 1 of the Criminal Procedure Act):⁵⁴

- if the second instance court issued a sentence of life imprisonment or imprisonment for 30 years, or if it confirmed the judgment of the first instance court which issued such sentences (not relevant in cases related to the abuse of personal data);
- if the second instance court on the basis of a public hearing established facts of the case different from those established by the first instance court, and based its judgment on these findings;
- if the second instance court found the defendant guilty by changing the judgment with which the first instance court found the defendant not guilty.

These two legal remedies (appeal to the Higher Court and the appeal to the Supreme Court) are considered to be regular legal remedies. After these appeals are used, the judgment is considered final. After the judgment becomes final, also a complaint to the Constitutional Court can be lodged in 60 days since the judgment is served. After the judgment becomes final there are additional legal remedies in place, called extraordinary legal remedies: renewal of procedure and claim for protection of legality.

- Burden of proof: please list what the complainant needs to prove
Claiming compensation before the criminal court (when it is connected to the crime which is subject to prosecution) requires the same activity of the victim as if this victim was claiming compensation before a civil court. This means that all four elements of

⁵² Slovenia, The Criminal Procedure Act, Official consolidated text (*Zakon o kazenskem postopku, Uradno prečiščeno besedilo, ZKP-UPB8*), 19 April 2012.

⁵³ Slovenia, The Criminal Procedure Act, Official consolidated text (*Zakon o kazenskem postopku, Uradno prečiščeno besedilo, ZKP-UPB8*), 19 April 2012.

⁵⁴ Slovenia, The Criminal Procedure Act, Official consolidated text (*Zakon o kazenskem postopku, Uradno prečiščeno besedilo, ZKP-UPB8*), 19 April 2012.

responsibility for damages have to be proven – 1) unlawful act, 2) damages, 3) nexus between unlawful act and damages and 4) responsibility for damages. The first three elements have to be proven by the complainant (victim), while for the fourth element – responsibility – the Code of Obligations contains the rule on the reversed burden of proof, meaning that the defendant has to prove that the damages occurred without his responsibility (Code of Obligations, Article 131, Para. 1).⁵⁵

- Available mechanism to lower the burden of proof: for example presumption of fact or reversal of the burden of proof or lump sum compensation arrangement etc.

In regard to the fourth element mentioned above, namely responsibility, the Code of Obligations contains the rule on the reversed burden of proof, meaning that the defendant has to prove that the damages occurred without his responsibility. (Article 131, Para. 1)⁵⁶

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

The complainant is not obliged to have an attorney in claiming compensation in the criminal procedure.

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

The victim of a crime does not automatically have the right to free legal aid or representation in the course of criminal procedure. Free legal aid is regulated by Free Legal Aid Act which sets conditions for the free legal aid to be approved. The victim has to meet the financial census set by this law and other conditions, such as that the matter is not apparently irrational, the matter is important for the financial and economic situation of a person, the matter is of life importance for the person, the matter is probably going to be successful etc. (Article 24 of the Free legal Aid Act). The request for free legal assistance is decided by the president of the competent district court or the president of specialised courts (labour court, administrative court) (Article 2). Free legal aid shall be provided by attorneys who are entered in the Register of Attorneys pursuant to the legislation governing attorneyship, by law firms founded on the basis of the mentioned legislation, and by notaries in matters dealt with pursuant to the act governing notaries. (Article 29) It may include, among other things, legal advice surpassing initial legal advice; drawing up, verification and authentication of deeds on legal relations, facts and statements; advice and representation in out-of-court settlements; advice and representation before courts in the first and second instances; advice and representation involving extraordinary legal remedies; advice and representation involving constitutional appeal and from payment of the costs of judicial proceedings. (Article 26) The Free Legal Aid Act also provides for the provision of the initial free legal advice which shall be deemed to be the provision of the eligible person with an explanation as to their legal status in the matter and brief advice on the possibilities for an out-of-court settlement, the rights and obligations upon instituting proceedings, court competencies, procedural rules, costs and method of execution of the decision. (Article 25) Apart from attorneys, the latter may also be offered by individuals who perform not-for-profit services of free legal aid with the approval of the minister responsible for justice. (Article 29)⁵⁷

⁵⁵ Slovenia, The Code of Obligations, Official consolidated text (*Obligacijski zakonik, Uradno prečiščeno besedilo, OZ-UPB1*), 27 September 2007.

⁵⁶ Slovenia, The Code of Obligations, Official consolidated text (*Obligacijski zakonik, Uradno prečiščeno besedilo, OZ-UPB1*), 27 September 2007.

⁵⁷ Slovenia, The Free Legal Aid Act (*Zakon o brezplačni pravni pomoči, ZBPP*), 31 May 2001. (and subsequent modifications)

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

By law everyone has the duty to report a crime. This duty is particularly set forth for state officials who become aware of a crime in performing their public duties. However, once that the crime is reported, the complainants have no particular *locus standi* in the criminal procedure.

However, individuals have *locus standi* in claiming compensation in criminal procedure only if they are victims of the crime and have suffered damages due to this crime. If they only file a complaint and the victim of the crime is someone else, they do not have any special locus standi in such procedures.

- Cost of procedure: please provide information on the average cost of the procedure
No data available.⁵⁸

- Average duration of procedure: please provide available information
No data available.⁵⁹

- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011
No data available.⁶⁰

Redress Mechanism Number 4 (Compensation): Compensation claim in civil procedure

- Range of possible outcomes

The amount of compensation awarded is not prescribed by law. In addition to compensation, the Code of Obligations foresees other possible outcomes of such case, such as publication of a judgment or corrective article (Article 178 of the Code of Obligations).

- Legal basis:

- a) Code of Obligations – Article 131, Para. 1.
- b) Civil Procedure Act (Zakon o pravdnem postopku, ZPP) – this piece of legislation governs civil procedure in which compensation is claimed.

- Type of procedure: civil

- Possibilities of appeal: 2nd, 3rd and further instances
2nd – Higher Court (Višje sodišče), 3rd – Supreme Court (Vrhovno sodišče), 4th – Constitutional Court (Ustavno sodišče)

⁵⁸ Information was provided by the Ministry of Justice and Public Administration (Ministrstvo za pravosodje in javno upravo, MPJU) and the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije) upon request.

⁵⁹ Information was provided by the Ministry of Justice and Public Administration (Ministrstvo za pravosodje in javno upravo, MPJU) and the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije) upon request.

⁶⁰ Information was provided by the Ministry of Justice and Public Administration (Ministrstvo za pravosodje in javno upravo, MPJU) and the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije) upon request.

Against first instance judgment issued by the civil court an appeal can be lodged to the Higher Court in 15 days since the first instance judgment is served. The judgment of the second instance court is final as no further regular legal remedies are allowed.

However, there are further possibilities of extraordinary legal remedies, i.e. revision that can be lodged to the Supreme Court against the judgment of the Higher Court. The revision has to be lodged in 30 days since the second instance judgment has been served (in cases when revision is always allowed, i.e. cases the value of which is over 40.000 EUR) and in 15 days since the decision of the Supreme Court allowing a revision is served (Article 367 of the Civil Procedure Act).

The Supreme Court allows a revision if it can be expected that its decision will concern an important legal issue significant for ensuring legal certainty, coherent use of law or development of case law. In such cases the Supreme Court allows a revision:

- if the case concerns a legal question on which the second instance court issued a judgment that does not correspond with the case law of the Supreme Court, or
- if the case concerns a legal question that is not yet addressed by the case law of the Supreme Court, in particular if the case law of the higher courts is incoherent,
- if the case concerns a legal question on which the Supreme Court case law is incoherent (Article 367.a of the Civil Procedure Act).⁶¹

Next extraordinary legal remedy that can be used by parties is renewal of the procedure (Articles 394-401 of the Civil Procedure Act). It has to be lodged to the first instance court.

The parties to the case which has been settled may lodge an action against the settlement. It has to be lodged to the court before which the case was settled. (Articles 392-393)

Another extraordinary legal remedy is claim for protection of legality (lodged to the Supreme Court) which can only be used by the prosecutor's office (Articles 385-391 of the Civil Procedure Act).

- Burden of proof: please list what the complainant needs to prove
Claiming compensation before the civil court requires that all four elements of responsibility for damages have to be proven – 1) unlawful act, 2) damages, 3) nexus between unlawful act and damages and 4) responsibility for damages. The first three elements have to be proven by the complainant (victim), while for the fourth element – responsibility – the Code of Obligations contains the rule on the reversed burden of proof, meaning that the defendant has to prove that the damages occurred without his responsibility (Code of Obligations, Article 131, Para. 1).⁶²

- Available mechanism to lower the burden of proof: for example presumption of fact or reversal of the burden of proof or lump sum compensation arrangement etc.

⁶¹ Slovenia, The Civil Procedure Act (*Zakon o pravdnem postopku, ZPP*), 25 March 1999. (and subsequent modifications)

⁶² Slovenia, The Code of Obligations, Official consolidated text (*Obligacijski zakonik, Uradno prečiščeno besedilo, OZ-UPBI*), 27 September 2007..

In regard to the fourth element mentioned above, namely responsibility, the Code of Obligations contains the rule on the reversed burden of proof, meaning that the defendant has to prove that the damages occurred without his responsibility. (Article 131, Para. 1)⁶³

Also, the parties to the dispute may always settle the case in which case the rules on the burden of proof are not relevant.

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

The claimant is not obliged to have an attorney in claiming compensation in the civil procedure, except when extraordinary legal remedies are used after the judgment became final. In such procedures the party is obliged to have a legal representative who is attorney at law. (Article 86 of the Civil Procedure Act)

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

A person involved in civil procedure, including a person claiming compensation in such a procedure, does not automatically have the right to free legal aid or representation in the course of the procedure. Free legal aid is regulated by Free Legal Aid Act which sets conditions for the free legal aid to be approved. A claimant has to meet the financial census set by this law and other conditions, such as that the matter is not apparently irrational, the matter is important for the financial and economic situation of a person, the matter is of life importance for the person, the matter is probably going to be successful etc. (Article 24 of the Free legal Aid Act). The request for free legal assistance is decided by the president of the competent district court or the president of specialised courts (labour court, administrative court) (Article 2). Free legal aid shall be provided by attorneys who are entered in the Register of Attorneys pursuant to the legislation governing attorneyship, by law firms founded on the basis of the mentioned legislation, and by notaries in matters dealt with pursuant to the act governing notaries. (Article 29) It may include, among other things, legal advice surpassing initial legal advice; drawing up, verification and authentication of deeds on legal relations, facts and statements; advice and representation in out-of-court settlements; advice and representation before courts in the first and second instances; advice and representation involving extraordinary legal remedies; advice and representation involving constitutional appeal and from payment of the costs of judicial proceedings. (Article 26) The Free Legal Aid Act also provides for the provision of the initial free legal advice which shall be deemed to be the provision of the eligible person with an explanation as to their legal status in the matter and brief advice on the possibilities for an out-of-court settlement, the rights and obligations upon instituting proceedings, court competencies, procedural rules, costs and method of execution of the decision. (Article 25) Apart from attorneys, the latter may also be offered by individuals who perform not-for-profit services of free legal aid with the approval of the minister responsible for justice. (Article 29)⁶⁴

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

⁶³ Slovenia, The Code of Obligations, Official consolidated text (*Obligacijski zakonik, Uradno prečiščeno besedilo, OZ-UPB1*), 27 September 2007.

⁶⁴ Slovenia, The Free Legal Aid Act (*Zakon o brezplačni pravni pomoči, ZBPP*), 31 May 2001. (and subsequent modifications)

According to Articles 199-202 of the Civil Procedure Act, there is a possibility for a third party (the so-called *intervenient*) to get involved with the case. The law states that the one who has a legal interest for one of the parties to the dispute to win the case, he or she may join this party in the dispute. The involvement of the intervenient in the dispute is subject to the permission of the court.

DP authorities, civil society organisations and associations may also seek to be allowed to participate in the case as intervenients.

- Cost of procedure: please provide information on the average cost of the procedure
No data available.⁶⁵
- Average duration of procedure: please provide available information
No data available.⁶⁶
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011
No data available.⁶⁷

Redress Mechanism Number 5 (the right of an individual to information (i.e. access to personal data)):

- Range of possible outcomes:
 - a) access to data granted by data controller upon intervention by the Information Commissioner;
 - b) fine: the then SIT 100,000 to 250,000 (app. Euro 417 – 1,043)
- Legal basis:
 - a) Personal Data Protection Act (Zakon o varstvu osebnih podatkov, ZVOP-1) - Part 3: Rights of the individual
Article 30 stipulates the right of the individual to have access to personal data kept by data controller. Upon the request of an individual, the data controller is obliged, among other things, to certify if data relating to them are being processed or not, and to enable them to consult their personal data contained in filing system, and to transcribe or copy such data; to provide the individual with extract of their personal data contained in filing system; to provide a list of data recipients to whom personal data were supplied, and information on when the

⁶⁵ Information was provided by the Ministry of Justice and Public Administration (Ministrstvo za pravosodje in javno upravo, MPJU) and the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije) upon request.

⁶⁶ Information was provided by the Ministry of Justice and Public Administration (Ministrstvo za pravosodje in javno upravo, MPJU) and the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije) upon request.

⁶⁷ Information was provided by the Ministry of Justice and Public Administration (Ministrstvo za pravosodje in javno upravo, MPJU) and the Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije) upon request.

data were supplied to data recipients, on what basis and for what purpose and to provide information on the purpose of processing and the type of personal data being processed, as well as all necessary explanations in this regard.

Article 31 of this act lays down procedure for access to personal data. The request for access to personal data must be lodged with the data controller in writing or orally in the record. This provision further determines the time period in which the data controller must respond to the person concerned.⁶⁸

Information Commissioner Act (*Zakon o informacijskem pooblaščenju, ZInfP*) – Chapter 1: General provisions

Article 2 stipulates that the Information Commissioner is an independent state body which decides on the appeal of an individual in cases when a data controller rejects their request for data, extract, list, examination, confirmation, information, explanation, transcript or copy in accordance with provisions of the act governing personal data protection.⁶⁹

Patient Rights Act (*Zakon o pacientovih pravicah, ZPacP*) – Chapter 12: The right to access to medical documentation

Article 41 of the act stipulates that patients and other eligible persons to whom access to medical documentation has been denied have the right to lodge a complaint with the Information Commissioner. The procedure before the national Data Protection authority shall be governed by the General Administrative Procedure Act (*Zakon o splošnem upravnem postopku, ZUP*) and provisions of the Information Commissioner Act covering access to public information.⁷⁰

b) Information Commissioner Act (*Zakon o informacijskem pooblaščenju, ZInfP*) – Chapter 5: Penal provisions

Article 15 lays down that a fine shall be imposed on the responsible official of a data controller which fails to respect the decision by the Information Commissioner granting an individual access to their personal data as set out in Article 2 of this act.⁷¹

- Type of procedure: administrative/ possible criminal – minor offences procedure/ data protection authority
- Possibilities of appeal: 2nd, 3rd and further instances
2nd – Administrative Court (*Upravno sodišče*), 3rd – Supreme Court (*Vrhovno sodišče*), 4th – Constitutional Court (*Ustavno sodišče*)
- Burden of proof:
The complainant must only provide the Information Commissioner with the evidence that they indeed lodged a request for access to personal data with the data controller, and that the latter rejected the request or failed to respond to their request.

⁶⁸ Slovenia, The Personal Data Protection Act, Official consolidated text (*Zakon o varstvu osebnih podatkov, Uradno prečiščeno besedilo, ZVOP-1-UPBI*), 27 September 2007.

⁶⁹ Slovenia, The Information Commissioner Act (*Zakon o informacijskem pooblaščenju, ZinfP*), 30 November 2011. (and subsequent modifications)

⁷⁰ Slovenia, The Patient Rights Act (*Zakon o pacientovih pravicah, ZpacP*), 29 January 2008.

⁷¹ Slovenia, The Information Commissioner Act (*Zakon o informacijskem pooblaščenju, ZinfP*), 30 November 2011. (and subsequent modifications)

- Available mechanism to lower the burden of proof: for example presumption of fact or reversal of the burden of proof or lump sum compensation arrangement etc.

N/A.

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

There is no requirement of legal representation. The complainant may initiate the procedure on their own.

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

In procedures before the Information Commissioner, free legal assistance is not available. In appellate procedures (e.g. procedures before the Administrative Court or the Supreme Court), free legal aid is available, but is not granted automatically. Free legal aid is regulated by Free Legal Aid Act which sets conditions for the free legal aid to be approved. An individual has to meet the financial census set by this law and other conditions, such as that the matter is not apparently irrational, the matter is important for the financial and economic situation of a person, the matter is of life importance for the person, the matter is probably going to be successful etc. (Article 24 of the Free legal Aid Act). The request for free legal assistance is decided by the president of the competent district court or the president of specialised courts (labour court, administrative court) (Article 2). Free legal aid shall be provided by attorneys who are entered in the Register of Attorneys pursuant to the legislation governing attorneyship, by law firms founded on the basis of the mentioned legislation, and by notaries in matters dealt with pursuant to the act governing notaries. (Article 29) It may include, among other things, legal advice surpassing initial legal advice; drawing up, verification and authentication of deeds on legal relations, facts and statements; advice and representation in out-of-court settlements; advice and representation before courts in the first and second instances; advice and representation involving extraordinary legal remedies; advice and representation involving constitutional appeal and from payment of the costs of judicial proceedings. (Article 26) The Free Legal Aid Act also provides for the provision of the initial free legal advice which shall be deemed to be the provision of the eligible person with an explanation as to their legal status in the matter and brief advice on the possibilities for an out-of-court settlement, the rights and obligations upon instituting proceedings, court competencies, procedural rules, costs and method of execution of the decision. (Article 25) Apart from attorneys, the latter may also be offered by individuals who perform not-for-profit services of free legal aid with the approval of the minister responsible for justice. (Article 29)⁷²

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

DP authority, namely the Information Commissioner, is directly involved in the procedure as it hears individual complaints. A complainant or a data controller may challenge the Commissioner's decision in an administrative dispute before the Administrative Court, and, at this instance, DP authorities have locus standi as the defendant party against which the lawsuit is lodged. Depending of the decision produced by the Administrative Court, the DP authority may act in the procedure before the Supreme Court as defendant party or the complainant.

⁷² Slovenia, The Free Legal Aid Act (*Zakon o brezplačni pravni pomoči, ZBPP*), 31 May 2001. (and subsequent modifications)

Civil society organisations and associations do not have locus standi in these procedures. The right to access to personal data is regarded in the Personal Data Protection Act as a the right guaranteed to individuals.

- Cost of procedure: please provide information on the average cost of the procedure
Data should be available at a later stage.
- Average duration of procedure: please provide available information.
Data should be available at a later stage.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011

In 2009, the Information Commissioner received 70 complaints concerning the right of individuals to access their personal data under Personal Data Protection Act and under Patient Rights Act.⁷³ Of 70 complaints, eight were related to access to medical documentation under Patient Rights Act.⁷⁴ The Information Commissioner concluded 57 cases. In 23 cases, data controllers granted access to data immediately upon being contacted by the Commissioner, while in three cases the Commissioner issued administrative decision obliging data controllers to allow for access to personal data. In 12 cases, applicants were referred to the competent institution or received advice with regard to the relevant procedures, seven applicants withdrew their applications, while 11 complainants received clarifications that their complaints were unfounded or did not represent a complaint in terms of access to personal data. In one case, the inspection procedure was initiated.

In 2009, complaints lodged with the Information Commissioner concerned:

- 19: access to data processed by healthcare institutions;
- 10: access to data processed by employers;
- 9: access to data in judicial records;
- 8: access to data from documents and official records kept by ministries and bodies within ministries;
- 6: access to data from documents related to police procedures;
- 4: access to data from documents related to procedures at insurance companies;
- 4: access to data processed by educational institutions;
- 10: access to data processed by other data controllers.⁷⁵

In 2010, the Information Commissioner received 85 complaints concerning the right of individuals to access their personal data under Personal Data Protection Act and under Patient Rights Act. Of 85 complaints, four were related to access to medical documentation under Patient Rights Act.⁷⁶ In 23 cases, data controllers granted access to data immediately upon being contacted by the Commissioner, while in 13 cases the Commissioner issued administrative decision obliging data controllers to allow for access to personal data. In four cases, applicants were referred to the competent institution, while six applicants received advice with regard to the relevant procedures. Two applicants withdrew their applications,

⁷³ Informacijski pooblaščenec (2010) *Letno poročilo Informacijskega pooblaščenca za leto 2009*, Ljubljana, Informacijski pooblaščenec, p. 43.

⁷⁴ Informacijski pooblaščenec (2011) *Letno poročilo Informacijskega pooblaščenca za leto 2010*, Ljubljana, Informacijski pooblaščenec, p. 44.

⁷⁵ Informacijski pooblaščenec (2010) *Letno poročilo Informacijskega pooblaščenca za leto 2009*, Ljubljana, Informacijski pooblaščenec, pp. 43-44.

⁷⁶ Informacijski pooblaščenec (2011) *Letno poročilo Informacijskega pooblaščenca za leto 2010*, Ljubljana, Informacijski pooblaščenec, p. 44..

while 11 complainants received clarifications that their complaints were unfounded or did not represent a complaint in terms of access to personal data. The Information Commissioner also rejected, in 2010, four complaints because they were incomplete or premature.⁷⁷

In 2010, complaints lodged with the Information Commissioner concerned:

- 31: state authorities, ministries and bodies within ministries;
- 12: healthcare institutions;
- 9: courts, state prosecutor's office and state attorney's office;
- 6: educational institutions;
- 5: insurance companies;
- 22: other data controllers (e.g. lawyers, associations, parish offices).⁷⁸

Also in 2010, one data controller and three complainants lodged lawsuits against decisions by the Commissioner before the Administrative Court.⁷⁹

In 2011, the Information Commissioner received 85 complaints concerning the right of individuals to access their personal data under Personal Data Protection Act and under Patient Rights Act. Of 85 complaints, 18 were related to access to medical documentation under Patient Rights Act.⁸⁰ In 16 cases, data controllers granted access to data immediately upon being contacted by the Commissioner, while in 13 cases the Commissioner issued administrative decision obliging data controllers to allow for access to personal data. In nine cases, applicants were referred to the competent institution, while seven applicants received advice with regard to the relevant procedures. Four applicants withdrew their applications, while 15 complainants were rejected because their complaints were unfounded or did not represent a complaint in terms of access to personal data. The Information Commissioner also rejected, in 2011, nine complaints because they were incomplete or premature.⁸¹

In 2011, complaints lodged with the Information Commissioner concerned:

- 22: state authorities, ministries and bodies within ministries;
- 19: healthcare institutions;
- 10: courts, state prosecutor's office and state attorney's office;
- 4: educational institutions;
- 3: insurance companies;
- 27: other data controllers (e.g. associations).⁸²

In 2011, five data controllers filed a lawsuit against the decision by the Commissioner with the Administrative Court, while, in one case, the complainant challenged the

⁷⁷ Informacijski pooblaščenec (2011) *Letno poročilo Informacijskega pooblaščenca za leto 2010*, Ljubljana, Informacijski pooblaščenec, p. 46.

⁷⁸ Informacijski pooblaščenec (2011) *Letno poročilo Informacijskega pooblaščenca za leto 2010*, Ljubljana, Informacijski pooblaščenec, p. 45.

⁷⁹ Informacijski pooblaščenec (2011) *Letno poročilo Informacijskega pooblaščenca za leto 2010*, Ljubljana, Informacijski pooblaščenec, p. 46.

⁸⁰ Informacijski pooblaščenec (2012) *Letno poročilo Informacijskega pooblaščenca za leto 2011*, Ljubljana, Informacijski pooblaščenec, p. 46.

⁸¹ Informacijski pooblaščenec (2012) *Letno poročilo Informacijskega pooblaščenca za leto 2011*, Ljubljana, Informacijski pooblaščenec, p. 48.

⁸² Informacijski pooblaščenec (2012) *Letno poročilo Informacijskega pooblaščenca za leto 2011*, Ljubljana, Informacijski pooblaščenec, p. 47.

Commissioner's decision. In three cases, the court rejected the appeal, while in three cases the court upheld complaints and referred cases to the Commissioner for new hearings.⁸³

Redress Mechanism Number 6 (minor offences procedure: fine, payment order, caution and warning):

- Range of possible outcomes

Caution, warning

Fine/ payment order: Euro 200 – 12,510 for various minor offences depending of the type of the offence and the perpetrator

- Legal basis:

a) Personal Data Protection Act (Zakon o varstvu osebnih podatkov, ZVOP-1) – Part 7: Penal provisions

This section determines penalties in cases of violation of the Personal Data Protection Act.⁸⁴

b) Information Commissioner Act (Zakon o informacijskem pooblaščenca, ZInfP) – Part 1: General provisions

Article 2 of the act stipulates that the Information Commissioner shall be the minor offences body supervising the implementation of the act governing personal data protection.⁸⁵

Personal Data Protection Act (Zakon o varstvu osebnih podatkov, ZVOP-1) – Part 4: Institutional personal data protection/ Chapter 3: Inspection supervision

Similarly, in terms of Article 54 of the Personal Data Protection Act, the Commissioner shall implement procedure in accordance with the law governing minor offences in cases when during inspection supervision there exists a suspicion of the commission of minor offence.⁸⁶

c) Minor Offences Act (Zakon o prekrških, ZP-1)

This act covers the minor offences procedure, including types of sanctions that may be imposed on violator in such procedures, namely fine/payment order or caution. The minor offence authority may also issue warning in cases of insignificant offences. The letter does not count as sanction.⁸⁷

- Type of procedure: criminal – minor offences procedure/ data protection authority

- Possibilities of appeal: 2nd, 3rd and further instances

2nd – Local Court (request for judicial protection), 3rd – Higher Court, 4th – Supreme Court

The regulation of possibilities for appeals in minor offences procedures is complex. There are three possible procedures in the field of minor offences – accelerated procedure, procedure with payment order and regular judicial procedure. In cases of data protection the

⁸³ Informacijski pooblaščenec (2012) *Letno poročilo Informacijskega pooblaščenca za leto 2011*, Ljubljana, Informacijski pooblaščenec, p. 48.

⁸⁴ Slovenia, The Personal Data Protection Act, Official consolidated text (*Zakon o varstvu osebnih podatkov, Uradno prečiščeno besedilo, ZVOP-1-UPB1*), 27 September 2007.

⁸⁵ Slovenia, The Information Commissioner Act (*Zakon o Informacijskem pooblaščenca, ZInfP*), 30 November 2011. (and subsequent modifications)

⁸⁶ Slovenia, The Personal Data Protection Act, Official consolidated text (*Zakon o varstvu osebnih podatkov, Uradno prečiščeno besedilo, ZVOP-1-UPB1*), 27 September 2007.

⁸⁷ Slovenia, The Minor Offences Act, Official consolidated text (*Zakon o prekrških, Uradno prečiščeno besedilo, ZP-1-UPB8*), 30 March 2011.

Information Commissioner always conducts accelerated procedure (as procedures with payment order are reserved for cases where the minor offences authority observes the minor offence taking place and record it with technical equipment, which predominantly takes place in traffic, while regular court procedures are intended for other types of minor offences, according to Articles 52 and 57 of the Minor Offences Act).

A regular legal remedy used against a decision on minor offence issued in accelerated procedure is *request for judicial protection*, addressed to Local Court. It has to be lodged in eight days since the decision was served to the party. Against the judgment of the Local Court an appeal can be lodged to the Higher Court, in eight days since the Local Court judgment is served to the party (Article 151 of the Minor Offence Act). A judgment issued by Higher Court is final and no further regular legal remedies are possible after this stage.

However, there are still two possibilities with extraordinary legal remedies. The first one is request for protection of legality, which only prosecutor's office may use, and the second one is annulment or changing of the decision which can be done upon the request of the body competent for minor offences (in this case Information Commissioner). (Articles 170 and 171.a of Minor Offences Act).

- Burden of proof:

The Information Commissioner may initiate a minor offence procedure *ex officio* or upon proposal by specific bodies (e.g. state prosecutor, bearers of public authority), as well as an injured party. The proposal contains available data on the alleged perpetrator, a description of the offense and the statement of facts and evidence indicating that the offence has taken place. Upon receipt of a proposal, the burden of proof is then entirely on the competent bodies for minor offences, in this case on the Information Commissioner.

- Available mechanism to lower the burden of proof: for example presumption of fact or reversal of the burden of proof or lump sum compensation arrangement etc.

No such mechanisms are available.

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

The Information Commissioner may initiate a minor offence procedure *ex officio* or upon proposal by specific bodies (e.g. state prosecutor, bearers of public authority), as well as an injured party. The latter does not need legal representation and can initiate the procedure on his own.

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

In procedures before the Information Commissioner, free legal assistance is not available.

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

DP authority, namely Information Commissioner, is directly involved in the procedure as it is the one that carries out the small offences procedure at the first instance. By the law

governing minor offences procedure, the Commissioner is authorised to initiate accelerated minor offence procedure.

Civil society organizations and associations do not have locus standi in minor offences procedures. They may only lodge a proposal with the Commissioner to start the minor offence procedure in cases when they are themselves victims of a minor offence.

- Cost of procedure: please provide information on the average cost of the procedure
Data should be available at a later stage.
- Average duration of procedure: please provide available information.
Data should be available at a later stage.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011

In 2009, the Commissioner initiated 163 minor offences procedures under the Personal Data Protection Act, of which 41 against legal persons in public sector (according to the Personal Data Protection Act, these are state bodies, bodies of self-governing local communities, holders of public powers, public agencies, public funds, public institutes, universities, independent institutions of higher education and self-governing communities of nationalities), 70 procedures against legal persons in private sector (according to the Personal Data Protection Act, these are legal or natural persons performing an activity in accordance with the statute regulating commercial companies or a commercial public service or craft, and persons of private law; public commercial institutes, public companies and commercial companies, irrespective of the share or influence held by the state, self-governing local communities or self-governing communities of nationalities) and 52 procedures against individual persons.⁸⁸

In 2009, as a result of established violations, the Information Commissioner issued:

- 59 warnings, of which seven were related to procedures started in 2008 (warnings are issued in cases of insignificant violations, and, legally, are not regarded as sanctions. In such cases, no decision is issued.);
- 93 decisions on minor offence: 67 cautions (less serious violations), of which 30 were related to procedures initiated in 2008, and 26 fines (serious violations), of which 9 pertaining to proceedings initiated in 2008;
- 12 payment orders (fines imposed by the Commissioner when identifying violations at the scene).⁸⁹

In 2009, identified violations were related to (during one procedure more than one violation could be identified):

- 108: personal data processing – Article 8 of the Personal Data Protection Act, Official consolidated text (ZVOP-1-UPB1);
- 17: security of personal data – Articles 24 and 25 of the ZVOP-1-UPB1;
- 13: direct marketing – Articles 72 and 73 of the ZVOP-1-UPB1;
- 11: video surveillance – Articles 74, 75, 76 and 77 of the ZVOP-1-UPB1;
- 6: Purpose of collection, and further processing – Article 16 of the ZVOP-1-UPB1;

⁸⁸ Informacijski pooblaščenec (2010) *Letno poročilo Informacijskega pooblaščenca za leto 2009*, Ljubljana, Informacijski pooblaščenec, p. 33.

⁸⁹ Informacijski pooblaščenec (2010) *Letno poročilo Informacijskega pooblaščenca za leto 2009*, Ljubljana, Informacijski pooblaščenec, p. 34.

- 5: setting up personal data filing system catalogue and data transmission in the filing systems register – Article 26 and 27 of the ZVOP-1-UPB1;
- 5: failure to implement measures imposed in inspection procedures – violation of the Inspection Procedure Act;
- 4: the processing of sensitive personal data – Article 13 of the ZVOP-1-UPB1;
- 3: informing individuals about the processing of personal data;
- 2: contractual data processing;
- 2: security of sensitive personal data;
- 1: records of data transfer – Article 22, Para. 3 of the ZVOP-1-UPB1;
- 1: data retention period – Article 21 of the ZVOP-1-UPB1;
- 1: the right of individual to information (i.e. access to personal data) – Article 30 of the ZVOP-1-UPB1.⁹⁰

In 2009, the Commissioner received 14 judgments by local courts observing appeals against decisions by the Commissioner. In 9 cases, the courts upheld the Commissioner's decisions. In three cases, the court reaffirmed the Commissioner's decisions, but amended the sanctions. In two cases, the courts upheld complaints against Commissioner's decision, and stopped the minor offences procedures.⁹¹

In 2010, the Commissioner initiated 179 minor offences procedures under the Personal Data Protection Act, of which 45 against legal persons in public sector, 82 procedures against legal persons in private sector and 52 procedures against individual persons.⁹²

In 2010, as a result of established violations, the Information Commissioner issued:

- 36 warnings, of which six were related to procedures started in 2009;
- 116 decisions on minor offence: 81 cautions, of which 19 were related to procedures initiated in 2009, and 35 fines, of which eight pertaining to proceedings initiated in 2009;
- 10 payment orders.⁹³

In 2010, identified violations were related to (during one procedure more than one violation could be identified):

- 103: personal data processing – Article 8 of the Personal Data Protection Act, Official consolidated text (ZVOP-1-UPB1);
- 51: security of personal data – Articles 24 and 25 of the ZVOP-1-UPB1;
- 29: direct marketing – Articles 72 and 73 of the ZVOP-1-UPB1;
- 25: setting up personal data filing system catalogue and data transmission in the filing systems register – Article 26 and 27 of the ZVOP-1-UPB1;
- 23: purpose of collection, and further processing – Article 16 of the ZVOP-1-UPB1;
- 20: video surveillance – Articles 74, 75, 76 and 77 of the ZVOP-1-UPB1;
- 19: security of sensitive personal data – Article 14 of the ZVOP-1-UPB1;
- 16: contractual data processing;
- 11: failure to implement measures imposed in inspection procedures – violation of the Inspection Procedure Act;

⁹⁰ Informacijski pooblaščenec (2010) *Letno poročilo Informacijskega pooblaščenca za leto 2009*, Ljubljana, Informacijski pooblaščenec, p. 34.

⁹¹ Informacijski pooblaščenec (2010) *Letno poročilo Informacijskega pooblaščenca za leto 2009*, Ljubljana, Informacijski pooblaščenec, p. 35.

⁹² Informacijski pooblaščenec (2011) *Letno poročilo Informacijskega pooblaščenca za leto 2010*, Ljubljana, Informacijski pooblaščenec, p. 33.

⁹³ Informacijski pooblaščenec (2011) *Letno poročilo Informacijskega pooblaščenca za leto 2010*, Ljubljana, Informacijski pooblaščenec, p. 34.

- 6: data retention period – Article 21 of the ZVOP-1-UPB1;
- 4: records of data transfer – Article 22, Para. 3 of the ZVOP-1-UPB1;
- 3: the processing of sensitive personal data – Article 13 of the ZVOP-1-UPB1;
- 3: informing individuals about the processing of personal data – Article 19 of the ZVOP-1-UPB1;
- 3: implementation of biometric measures – Articles 78, 79, 80 and 81 of the ZVOP-1-UPB1.⁹⁴

In 2010, the Commissioner received 15 judgments by local courts observing appeals against decisions by the Commissioner. In 11 cases, appeals against the Commissioner's decisions were rejected as unsubstantiated. In three cases, the courts upheld complaints against Commissioner's decision, and stopped the minor offences procedures. In one, the court reaffirmed the Commissioner's decision, but amended the sanction.⁹⁵

In 2011, the Commissioner initiated 136 minor offences procedures under the Personal Data Protection Act, of which 43 against legal persons in public sector, 66 procedures against legal persons in private sector and 27 procedures against individual persons.⁹⁶

In 2011, as a result of established violations, the Information Commissioner issued:

- 30 warnings, of which seven were related to procedures started in 2009;
- 64 decisions on minor offence: 52 cautions, of which 11 were related to procedures initiated in 2009, and 12 fines, of which five pertaining to proceedings initiated in previous years;
- 7 payment orders.⁹⁷

Also in 2011, for the sake of economy of operation, the Commissioner issued 75 warnings for minor offences during inspection procedures.⁹⁸

In 2011, identified violations were related to (during one procedure more than one violation could be identified):

- 83: personal data processing – Article 8 of the Personal Data Protection Act, Official consolidated text (ZVOP-1-UPB1);
- 39: video surveillance – Articles 74, 75, 76 and 77 of the ZVOP-1-UPB1;
- 37: security of personal data – Articles 24 and 25 of the ZVOP-1-UPB1;
- 21: contractual data processing – Article 11 of the ZVOP-1-UPB1;
- 20: purpose of collection, and further processing – Article 16 of the ZVOP-1-UPB1;
- 16: setting up personal data filing system catalogue and data transmission in the filing systems register – Article 26 and 27 of the ZVOP-1-UPB1;
- 11: failure to implement measures imposed in inspection procedures – violation of the Inspection Procedure Act;
- 10: direct marketing – Articles 72 and 73 of the ZVOP-1-UPB1;
- 6: records of data transfer – Article 22, Para. 3 of the ZVOP-1-UPB1;

⁹⁴ Informacijski pooblaščenec (2011) *Letno poročilo Informacijskega pooblaščenca za leto 2010*, Ljubljana, Informacijski pooblaščenec, p. 34.

⁹⁵ Informacijski pooblaščenec (2011) *Letno poročilo Informacijskega pooblaščenca za leto 2010*, Ljubljana, Informacijski pooblaščenec, p. 35.

⁹⁶ Informacijski pooblaščenec (2012) *Letno poročilo Informacijskega pooblaščenca za leto 2011*, Ljubljana, Informacijski pooblaščenec, p. 35.

⁹⁷ Informacijski pooblaščenec (2012) *Letno poročilo Informacijskega pooblaščenca za leto 2011*, Ljubljana, Informacijski pooblaščenec, p. 36.

⁹⁸ Informacijski pooblaščenec (2012) *Letno poročilo Informacijskega pooblaščenca za leto 2011*, Ljubljana, Informacijski pooblaščenec, p. 36.

- 4: data retention period – Article 21 of the ZVOP-1-UPB1;
- 3: implementation of biometric measures – Articles 78, 79, 80 and 81 of the ZVOP-1-UPB1;
- 1: security of sensitive personal data – Article 14 of the ZVOP-1-UPB1;
- 1: silence of data controller regarding request for data deletion.⁹⁹

In 2011, the Commissioner received 25 rulings by local courts observing appeals against decisions by the Commissioner. In nine cases, appeals against the Commissioner's decisions were rejected as unsubstantiated. In eight cases, the court reaffirmed the Commissioner's decision, but amended the sanction. In six cases, the courts upheld complaints against Commissioner's decision, and stopped the minor offences procedures. In one case, the request for judicial protection against the Commissioner's decision was rejected, while in one case the application was returned to the Commissioner because its judicial review was not possible.¹⁰⁰

Redress Mechanism Number 7 (warnings in relation to minor violations, regulatory or administrative decisions ordering rectification of established regularities and imposing measures, including immediate measures):

- Range of possible outcomes

Warnings, regulatory or administrative decision resulting in rectification of established irregularities. Immediate measures may also be imposed: elimination of irregularities or deficiencies the Commissioner identifies, banning the processing of personal data, their anonymisation, blocking, deletion and destruction of personal data which have been processed in an unlawful manner; the prohibition of transfer of data to third countries as well as other measures in accordance with the relevant legislation.

- Legal basis:

a) Information Commissioner Act (Zakon o informacijskem pooblaščenju, ZInfP) – Chapter 1: General provisions

Article 2 stipulates that the Information Commissioner shall be tasked with inspection supervision over the implementation of legislation in the area of data processing and data protection.¹⁰¹

Personal Data Protection Act (Zakon o varstvu osebnih podatkov, ZVOP-1) – Part 4: Institutional personal data protection, Chapter 1: Supervisory body for personal data protection

Pursuant to Article 37, the National Supervisory Body performs inspection supervision on the implementation of this act as well as of other regulations covering the protection or processing of personal data or their transfer from the country.¹⁰²

b) Inspection Act (Zakon o inšpekcijskem nadzoru, ZIN)

This the general piece of legislation governing inspection procedures and inspection measures.¹⁰³

⁹⁹ Informacijski pooblaščenec (2012) *Letno poročilo Informacijskega pooblaščenca za leto 2011*, Ljubljana, Informacijski pooblaščenec, p. 36.

¹⁰⁰ Informacijski pooblaščenec (2012) *Letno poročilo Informacijskega pooblaščenca za leto 2011*, Ljubljana, Informacijski pooblaščenec, p. 37.

¹⁰¹ Slovenia, The Information Commissioner Act (*Zakon o informacijskem pooblaščenju, ZInfP*), 30 November 2011. (and subsequent modifications)

¹⁰² Slovenia, The Personal Data Protection Act, Official consolidated text (*Zakon o varstvu osebnih podatkov, Uradno prečiščeno besedilo, ZVOP-1*), 27 September 2007.

Personal Data Protection Act (Zakon o varstvu osebnih podatkov, ZVOP-1) - Part 4: Institutional personal data protection, Chapter 3: Inspection supervision

This chapter defines the scope of inspection supervision in the area of data protection as well as inspection measures.¹⁰⁴

- Type of procedure: administrative/ data protection authority

- Burden of proof:

Anyone, including anonymous individual, may submit report or lodge a complaint with the inspection bodies, including with the Information Commissioner, stating that a specific issue exhibits signs of violation of legislation. Upon assessment of complaints or reports, the Commissioner may initiate the relevant procedures, and it is up to him to collect evidence confirming that the violation of the law has occurred.

- Available mechanism to lower the burden of proof: for example presumption of fact or reversal of the burden of proof or lump sum compensation arrangement etc.

There is no such a mechanism.

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

There is no requirement of legal representation in this type of the procedure. In regard to inspection procedures, anyone may report cases of alleged breaches of the relevant legislation, including in the area of data protection. Competent inspection services, including the Information Commissioner which oversees the field of data protection, are also obliged to deal with anonymous reports of the alleged violations of the relevant legal provisions.

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

By the relevant law governing free legal aid in Slovenia, such legal assistance is provided in judicial procedures. In cases brought before the Information Commissioner, it is not available. In general, complainants, including complainants who were affected by the violation, are not parties in the inspection procedures.

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

The Information Commissioner is directly involved in the procedure as this body undertakes inspection procedures and imposes measures in cases of established irregularities.

Each individual as well as civil society organisations and associations may report cases of violations of personal data protection regulations to the Information Commissioner. In general, complainants are not parties in the procedure, including in cases when they are injured parties. Unlike other supervisory bodies and inspection services which inform complainants on their request, the Information Commissioner is the only such a body which, as a rule, must inform complainants about the outcomes of the introduced inspection

¹⁰³ Slovenia, The Inspection Act, Official consolidated text (*Zakon o inšpekcijskem nadzoru, Uradno prečiščeno besedilo, ZIN-UPB1*), 26 April 2007.

¹⁰⁴ Slovenia, The Personal Data Protection Act, Official consolidated text (*Zakon o varstvu osebnih podatkov, Uradno prečiščeno besedilo, ZVOP-1*), 27 September 2007.

procedures, including in cases when complainants have not explicitly asked for such information.

- Cost of procedure: please provide information on the average cost of the procedure
Data should be available at a later stage.

- Average duration of procedure: please provide available information
Data should be available at a later stage.

- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011

In 2009, the Information Commissioner received 165 complaints claiming alleged violations of the Personal Data Protection Act against legal persons in public sector (according to the Personal Data Protection Act, these are state bodies, bodies of self-governing local communities, holders of public powers, public agencies, public funds, public institutes, universities, independent institutions of higher education and self-governing communities of nationalities). Upon assessment of complaints, the Commissioner initiated 124 inspection procedures, while further 54 inspection procedures were initiated ex officio. After procedures were concluded, the Commissioner issued 22 warnings in relation to minor violations as well as 17 regulatory or administrative decisions in relation to more serious violations ordering liable persons to employ measures rectifying the established irregularities, of which three were related to cases from 2008.¹⁰⁵

In 2009, complaints alleging violations of data protection rules against legal persons in public sector referred to:

- 55: unlawful collection or request for personal data;
- 41: disclosure of personal data to unauthorised users by data controllers;
- 29: insufficient security measures ensuring adequate protection of personal data;
- 20: unlawful publication of personal data (e.g. on notice boards or in the media);
- 11: unlawful video surveillance;
- 9: other alleged violations.¹⁰⁶

In 2009, complaints were lodged against and procedures ex officio were initiated in relation to the following institutions:

- 55: educational institutions;
- 42: state bodies, ministries and bodies within ministries;
- 39: public funds, institutes, agencies and other legal persons of public law;
- 33: municipalities;
- 25: healthcare institutions;
- 19: courts and the Office of the State Prosecutor General;
- 8: administrative units.¹⁰⁷

In 2009, the Information Commissioner received 332 complaints claiming alleged violations of the Personal Data Protection Act against legal persons in private sector (according to the Personal Data Protection Act, these are legal or natural persons performing an activity in

¹⁰⁵ Informacijski pooblaščenec (2010) *Letno poročilo Informacijskega pooblaščenca za leto 2009*, Ljubljana, Informacijski pooblaščenec, pp. 30-31.

¹⁰⁶ Informacijski pooblaščenec (2010) *Letno poročilo Informacijskega pooblaščenca za leto 2009*, Ljubljana, Informacijski pooblaščenec, p. 31.

¹⁰⁷ Informacijski pooblaščenec (2010) *Letno poročilo Informacijskega pooblaščenca za leto 2009*, Ljubljana, Informacijski pooblaščenec, pp. 31-32.

accordance with the statute regulating commercial companies or a commercial public service or craft, and persons of private law; public commercial institutes, public companies and commercial companies, irrespective of the share or influence held by the state, self-governing local communities or self-governing communities of nationalities). Upon reviewing complaints, the Commissioner initiated 267 inspection procedures, while further 73 inspection procedures were initiated ex officio. After procedures were concluded, the Commissioner issued 44 warnings in relation to minor violations as well as 30 regulatory or administrative decisions in relation to more serious violations ordering liable persons to employ measures rectifying the established irregularities, of which 12 in relation to cases initiated in 2008.¹⁰⁸

In 2009, complaints alleging violations of data protection rules against legal persons in private sector were related to:

- 79: unlawful collection or request for personal data;
- 69: disclosure of personal data to unauthorised users by data controllers;
- 57: unlawful publication of personal data (e.g. on notice boards or in the media);
- 46: unlawful video surveillance;
- 38: misuse of personal data for the purpose of direct marketing;
- 25: insufficient security measures ensuring adequate protection of personal data;
- 18: other alleged violations.¹⁰⁹

In 2010, the Information Commissioner received 176 complaints claiming alleged violations of the Personal Data Protection Act against legal persons in public sector. Upon assessment of complaints, the Commissioner initiated 124 inspection procedures, while further 26 inspection procedures were initiated ex officio. After procedures were concluded, the Commissioner issued 23 warnings in relation to minor violations as well as 34 regulatory or administrative decisions in relation to more serious violations ordering liable persons to employ measures rectifying the established irregularities, of which 14 were related to cases initiated in 2009.¹¹⁰

In 2010, complaints alleging violations of data protection rules against legal persons in public sector referred to:

- 52: disclosure of personal data to unauthorised users by data controllers;
- 37: unlawful publication of personal data (e.g. on notice boards or in the media);
- 31: unlawful collection or request for personal data;
- 22: insufficient security measures ensuring adequate protection of personal data;
- 8: unlawful video surveillance;
- 2: abuse of personal data for the purpose of direct marketing;
- 24: other alleged violations.¹¹¹

In 2010, complaints were lodged against and procedures ex officio were initiated in relation to the following institutions:

- 57: state bodies, ministries and bodies within ministries;
- 41: educational institutions;

¹⁰⁸ Informacijski pooblaščenec (2010) *Letno poročilo Informacijskega pooblaščenca za leto 2009*, Ljubljana, Informacijski pooblaščenec, pp. 30-31.

¹⁰⁹ Informacijski pooblaščenec (2010) *Letno poročilo Informacijskega pooblaščenca za leto 2009*, Ljubljana, Informacijski pooblaščenec, p. 32.

¹¹⁰ Informacijski pooblaščenec (2011) *Letno poročilo Informacijskega pooblaščenca za leto 2010*, Ljubljana, Informacijski pooblaščenec, p. 31.

¹¹¹ Informacijski pooblaščenec (2011) *Letno poročilo Informacijskega pooblaščenca za leto 2010*, Ljubljana, Informacijski pooblaščenec, p. 31.

- 32: public funds, institutes, agencies and other legal persons of public law;
- 24: healthcare institutions;
- 23: municipalities;
- 19: courts, Office of the State Prosecutor General and Office of the State Attorney;
- 6: administrative units.¹¹²

In 2010, the Information Commissioner received 367 complaints claiming alleged violations of the Personal Data Protection Act against legal persons in private sector. Upon reviewing complaints, the Commissioner initiated 276 inspection procedures, while further 30 inspection procedures were initiated ex officio. After procedures were concluded, the Commissioner issued 31 warnings in relation to minor violations as well as 51 regulatory or administrative decisions in relation to more serious violations ordering liable persons to employ measures rectifying the established irregularities, of which 20 in relation to cases initiated in previous years.¹¹³

In 2010, complaints alleging violations of data protection rules against legal persons in private sector were related to:

- 84: misuse of personal data for the purpose of direct marketing;
- 71: unlawful collection or request for personal data;
- 53: unlawful publication of personal data (e.g. on notice boards or in the media);
- 51: unlawful video surveillance;
- 49: disclosure of personal data to unauthorised users by data controllers;
- 25: insufficient security measures ensuring adequate protection of personal data;
- 34: other alleged violations.¹¹⁴

In 2011, the Information Commissioner received 219 complaints claiming alleged violations of the Personal Data Protection Act against legal persons in public sector. Upon assessment of complaints, the Commissioner initiated 159 inspection procedures, while further 27 inspection procedures were initiated ex officio. After procedures were concluded, the Commissioner issued 11 warnings in relation to minor violations as well as 23 regulatory or administrative decisions in relation to more serious violations ordering liable persons to employ measures rectifying the established irregularities, of which five were related to cases initiated in previous years.¹¹⁵

In 2011, complaints alleging violations of data protection rules against legal persons in public sector referred to:

- 98: unlawful disclosure of personal data: transfer of data to unauthorised users by data controllers and unlawful publication of personal data (e.g. on the internet or in other media);
- 51: unlawful collection or request for personal data;
- 22: unlawful video surveillance;
- 21: insufficient security measures ensuring adequate protection of personal data;
- 5: abuse of personal data for the purpose of direct marketing;

¹¹² Informacijski pooblaščenec (2011) *Letno poročilo Informacijskega pooblaščenca za leto 2010*, Ljubljana, Informacijski pooblaščenec, p. 31.

¹¹³ Informacijski pooblaščenec (2011) *Letno poročilo Informacijskega pooblaščenca za leto 2010*, Ljubljana, Informacijski pooblaščenec, p. 32.

¹¹⁴ Informacijski pooblaščenec (2011) *Letno poročilo Informacijskega pooblaščenca za leto 2010*, Ljubljana, Informacijski pooblaščenec, p. 32.

¹¹⁵ Informacijski pooblaščenec (2012) *Letno poročilo Informacijskega pooblaščenca za leto 2011*, Ljubljana, Informacijski pooblaščenec, p. 33.

- 22: other alleged violations.¹¹⁶

In 2011, complaints were lodged against and procedures ex officio were initiated in relation to the following institutions:

- 106: public funds, institutes, agencies and other legal persons of public law, of which 52 were related to educational institutions and 16 to healthcare institutions;
- 88: state bodies, ministries and bodies within ministries;
- 27: courts, Office of the State Prosecutor General and Office of the State Attorney;
- 25: municipalities.¹¹⁷

In 2011, the Information Commissioner received 398 complaints claiming alleged violations of the Personal Data Protection Act against legal persons in private sector. Upon reviewing complaints, the Commissioner initiated 285 inspection procedures, while further 38 inspection procedures were initiated ex officio. After procedures were concluded, the Commissioner issued 27 warnings in relation to minor violations as well as 56 regulatory or administrative decisions in relation to more serious violations ordering liable persons to employ measures rectifying the established irregularities, of which 20 in relation to cases initiated in previous years.¹¹⁸

In 2011, complaints alleging violations of data protection rules against legal persons in private sector were related to:

- 120: unlawful disclosure of personal data: transfer of data to unauthorised users by data controllers and unlawful publication of personal data (e.g. on notice boards or in the media);
- 77: unlawful collection or request for personal data;
- 74: misuse of personal data for the purpose of direct marketing;
- 67: unlawful video surveillance;
- 22: insufficient security measures ensuring adequate protection of personal data;
- 38: other alleged violations.¹¹⁹

¹¹⁶ Informacijski pooblaščenec (2012) *Letno poročilo Informacijskega pooblaščenca za leto 2011*, Ljubljana, Informacijski pooblaščenec, p. 33.

¹¹⁷ Informacijski pooblaščenec (2012) *Letno poročilo Informacijskega pooblaščenca za leto 2011*, Ljubljana, Informacijski pooblaščenec, p. 33.

¹¹⁸ Informacijski pooblaščenec (2012) *Letno poročilo Informacijskega pooblaščenca za leto 2011*, Ljubljana, Informacijski pooblaščenec, pp. 33-34.

¹¹⁹ Informacijski pooblaščenec (2012) *Letno poročilo Informacijskega pooblaščenca za leto 2011*, Ljubljana, Informacijski pooblaščenec, p. 34.