

# HUNGARY

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Ad Hoc Information Report

Data protection: Redress mechanisms and their use

2012

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

Foreword to the Report on Hungary:

On the 1st of January, 2012 a new act on data protection came into force in Hungary (hereinafter: InfoAct)<sup>1</sup>. This piece of legislation has rearranged the institutional system of data protection, and this had a significant effect on the redress mechanisms in the area of data protection. On the last day of 2011 the institution of the Parliamentary Commissioner for Data Protection and Freedom of Information (DPC) (*Adatvédelem és Információszabadság Védelméért Felelős Országgyűlési Biztos*) finished its operation, the next day a new body, the National Authority for Data Protection and Freedom of Information (NDPA) (*Nemzeti Adatvédelmi és Információszabadság Hatóság*) started working. The two institutions are not only different in their legal status, but also in their duties, competences, proceedings and measures. The NDPA is not the successor of the Commissioner's institution, however the transitory provisions of the InfoAct rules that the NDPA shall proceed in accordance with regulations governing the InfoAct in cases in progress on the grounds of submissions received by the data protection commission prior to 1st of January, and data controlled within the scope of responsibilities of the data protection commissioner prior to 1st of January 2012 shall be controlled by the NDPA after that date.<sup>2</sup> These changes have to be taken into consideration when examining the data below. The first five months of operation by the NDPA do not allow us to draw general conclusions on the functioning of the newly established redress mechanisms. It is also due to the institutional changes that statistical data on the years of 2009-2011 are missing in accordance with some of the present redress mechanisms described below. In order to give a comprehensive picture, both the mechanisms operating until recently, and the current ones are described below.

When preparing this report, the mapping of redress mechanisms were based on the definition given in the guideline ("any procedure offered by the legal system"). One redress mechanism, however, can lead to several outcomes. The following chart is broken down according to the types of procedures

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<sup>1</sup> Hungary, Act No. CXII of 2011.

<sup>2</sup> Hungary, Act No. CXII of 2011 Art. 75 (1)-(2).

| 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                        | providing information; correcting, blocking and deleting of data; reversing a decision made with an automated data processing; taking into account the data subject's objection | court (civil chambers)             | no particular statistics <sup>3</sup>                                                                         | no particular statistics <sup>4</sup>                                                                         | no particular statistics <sup>5</sup>                                                                         |
| 2                        | compensation                                                                                                                                                                    | court (civil chambers)             | no particular statistics <sup>6</sup>                                                                         | no particular statistics <sup>7</sup>                                                                         | no particular statistics <sup>8</sup>                                                                         |
| 3                        | notice; recommendation                                                                                                                                                          | National Data Protection Authority | redress mechanism did not exist in this year <sup>9</sup>                                                     | redress mechanism did not exist in this year <sup>10</sup>                                                    | redress mechanism did not exist in this year <sup>11</sup>                                                    |
| 4                        | order of prohibition or                                                                                                                                                         | National Data Protection Authority | redress mechanism did                                                                                         | redress mechanism did                                                                                         | redress mechanism did                                                                                         |

<sup>3</sup> According to the response of the National Judicial Office (*Országos Bírósági Hivatal (OBH)*) to the letter requested information concerned, the central data collection on judicial statistics does not detail the legal basis of motions. Consequently, the official register of the Office does not provide for information on how many lawsuits were initiated on the basis of the (former) InfoAct. The register of the Office does not specify the subject matter of cases conducted by courts regarding inherent rights, therefore, the only way to get information on how many lawsuits having privacy aspects were handled by the court, would be to inspect every single litigation file. The same applies to the sanctions too. The number of cases provided in the response to our data request covered the number of cases of redress mechanisms No. 1, 2, 5 and also further lawsuits relating to infringement of personality rights in sum, therefore, one cannot separate how many procedures were conducted. According to the information provided, in 2009, 950 cases relating to infringement of personality rights were initiated, 949 were finished, 868 cases had not been completed. In 2010, 1167 cases relating to infringement of personality rights were initiated, 1151 were finished, 884 cases had not been completed. In 2011, 1234 cases relating to infringement of personality rights were initiated, 1250 were finished, 868 cases had not been completed.

<sup>4</sup> See footnote No. 3.

<sup>5</sup> See footnote No. 3.

<sup>6</sup> See footnote No. 3.

<sup>7</sup> See footnote No. 3.

<sup>8</sup> See footnote No. 3.

<sup>9</sup> InfoAct entered into force on 1st January, 2012.

<sup>10</sup> InfoAct entered into force on 1st January, 2012.

<sup>11</sup> InfoAct entered into force on 1st January, 2012.

|                                       | fine                                                                                                                                                                                                                                                    |                                                                           | not exist in this year <sup>12</sup>           | not exist in this year <sup>13</sup>            | not exist in this year <sup>14</sup>            |
|---------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|------------------------------------------------|-------------------------------------------------|-------------------------------------------------|
| 5                                     | declaration of the occurrence of the infringement;<br>discontinuation and interdiction from infringement;<br>(public) restitution;<br>termination of the injurious situation and the restoration of the previous state;<br>charges for punitive damages | court (civil chambers)                                                    | no particular statistics <sup>15</sup>         | no particular statistics <sup>16</sup>          | no particular statistics <sup>17</sup>          |
| 6                                     | order to cease the infringement or discontinue the unlawful conduct;<br>impose an electronic commerce penalty                                                                                                                                           | National Media and Infocommunications Authority                           | 307 <sup>18</sup>                              | 118 <sup>19</sup>                               | 89 <sup>20</sup>                                |
| 7                                     | Punishment (imprisonment)                                                                                                                                                                                                                               | district courts (groups of criminal judges)                               | 96 indictments (164 accusations) <sup>21</sup> | 428 indictments (552 accusations) <sup>22</sup> | 509 indictments (667 accusations) <sup>23</sup> |
| 8 (in operation until 1 January 2012) | Advise, Recommendation and Order                                                                                                                                                                                                                        | Parliamentary Commissioner for Data Protection and Freedom of Information | 1079 <sup>24</sup>                             | 1347 <sup>25</sup>                              | 949 <sup>26</sup>                               |

<sup>12</sup> InfoAct entered into force on 1st January, 2012.

<sup>13</sup> InfoAct entered into force on 1st January, 2012.

<sup>14</sup> InfoAct entered into force on 1st January, 2012.

<sup>15</sup> See footnote No. 3.

<sup>16</sup> See footnote No. 3.

<sup>17</sup> See footnote No. 3.

<sup>18</sup> Response letter by the National Media and Infocommunications Authority to data request, dated on 9<sup>th</sup> May 2012.

<sup>19</sup> Response letter by the National Media and Infocommunications Authority to data request, dated on 9<sup>th</sup> May 2012.

<sup>20</sup> Response letter by the National Media and Infocommunications Authority to data request, dated on 9<sup>th</sup> May 2012.

<sup>21</sup> Response letter by the Prosecution Service of Hungary to data request, dated on 22<sup>th</sup> May 2012.

<sup>22</sup> Response letter by the Prosecution Service of Hungary to data request, dated on 22<sup>th</sup> May 2012.

<sup>23</sup> Response letter by the Prosecution Service of Hungary to data request, dated on 22<sup>th</sup> May 2012.

<sup>24</sup> Response letter by the National Authority for Data Protection and Freedom of Information to data request, dated on 11<sup>th</sup> May 2012.

<sup>25</sup> Response letter by the National Authority for Data Protection and Freedom of Information to data request, dated on 11<sup>th</sup> May 2012.

<sup>26</sup> Response letter by the National Authority for Data Protection and Freedom of Information to data request, dated on 11<sup>th</sup> May 2012.

## References

| Official exact title EN                                                                                    | Official title (HU)                                                                                                                                           | Full reference                                                                                                                                                                                                                                                                                                                       |
|------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Act No CXII. of 2011 on the Rights to Informational Self-determination and Freedom of Information, InfoAct | Az információs önrendelkezési jogról és az információszabadságról szóló 2011. évi CXII. törvény                                                               | Hungary, Act No CXII. of 2011 on the Rights to Informational Self-determination and Freedom of Information ( <i>Az információs önrendelkezési jogról és az információszabadságról szóló 2011. évi CXII. törvény</i> ), last amended by the Act No. XXV of 2012.                                                                      |
| Act No. III of 1952 on the Code of Civil Procedure                                                         | A polgári perrendtartásról szóló 1952. évi III. törvény                                                                                                       | Hungary, Act No. III of 1952 on the Code of Civil Procedure ( <i>A polgári perrendtartásról szóló 1952. évi III. törvény</i> ), last amended by the Act No. XXXVIII of 2012.                                                                                                                                                         |
| Act No. LXXX of 2003 on Legal Aid Service                                                                  | A jogi segítségnyújtásról szóló 2003. évi LXXX. törvény                                                                                                       | Hungary, Act No. LXXX of 2003 on Legal Aid Service ( <i>A jogi segítségnyújtásról szóló 2003. évi LXXX. törvény</i> ), last amended by the Act No. CCI of 2011.                                                                                                                                                                      |
| Act No. XCIII of 1990 on Fiscal Charges                                                                    | Az illetékekről szóló 1990. évi XCIII. törvény                                                                                                                | Hungary, Act No. XCIII of 1990 on Fiscal Charges ( <i>Az illetékekről szóló 1990. évi XCIII. törvény</i> ), last amended by the Act No. XXXVII of 2012.                                                                                                                                                                              |
| Act No. LXIII of 1992 on the protection of personal data and the disclosure of data of public interest     | A személyes adatok védelméről és a közérdekű adatok nyilvánosságáról szóló 1992. évi LXIII. törvény                                                           | Hungary, Act No. LXIII of 1992 on the protection of personal data and on the disclosure of data of public interest ( <i>A személyes adatok védelméről és a közérdekű adatok nyilvánosságáról szóló 1992. évi LXIII. törvény</i> ), repealed by the Act No. CXII. of 2011 on 1st of January, 2012.                                    |
| Act No. CXL of 2004 on the General Rules of Administrative Proceedings and Services                        | A közigazgatási hatósági eljárások és szolgáltatások általános szabályairól szóló 2004. évi CXL. törvény                                                      | Hungary, Act CXL of 2004 on the General Rules of Administrative Proceedings and Services ( <i>A közigazgatási hatósági eljárások és szolgáltatások általános szabályairól szóló 2004. évi CXL. törvény</i> ), last amended by the Act No. XXXI. of 2012.                                                                             |
| Act No. IV of 1959 on the Civil Code                                                                       | A polgári törvénykönyvről szóló 1959. évi IV. törvény                                                                                                         | Hungary, Act No. IV of 1959 on the Civil Code ( <i>A polgári törvénykönyvről szóló 1959. évi IV. törvény</i> ), last amended by the Act No. XXXVIII. of 2012.                                                                                                                                                                        |
| Act No CVIII. of 2001 on certain issues of electronic commerce services and information society services   | Az elektronikus kereskedelmi szolgáltatások, valamint az információs társadalommal összefüggő szolgáltatások egyes kérdéseiről szóló 2001. évi CVIII. törvény | Hungary, Act No CVIII. of 2001 on certain issues of electronic commerce services and information society services ( <i>Az elektronikus kereskedelmi szolgáltatások, valamint az információs társadalommal összefüggő szolgáltatások egyes kérdéseiről szóló 2001. évi CVIII. törvény</i> ), last amended by the Act No. CCI of 2011. |
| Act No. IV of 1978 on the Criminal Code                                                                    | A büntető törvénykönyvről szóló 1978. évi IV. törvény                                                                                                         | Hungary, Act No. IV of 1978 on the Criminal Code ( <i>A büntető törvénykönyvről szóló 1978. évi IV. törvény</i> ), last amended by the Act No. II of 2012.                                                                                                                                                                           |

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|-----------------------------------------------------------------------|-----------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Act No LIX of 1993 on the Parliamentary Commissioner for Civil Rights | Az állampolgári jogok országgyűlési biztosáról szóló 1993. évi LIX. törvény | Hungary, Act No LIX of 1993 on the Parliamentary Commissioner for Civil Rights ( <i>Az állampolgári jogok országgyűlési biztosáról szóló 1993. évi LIX. törvény</i> ), repealed by the Act No. CXI of 2011 on 1st of January, 2012. |
|-----------------------------------------------------------------------|-----------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

# Annex: Detailed information

## **Ad Redress Mechanism Number 1: Assertion of Rights of Data Subjects in Court:**

- *Range of possible outcomes:* If the court adopts the motion, the controller shall be obliged to provide information, correct, block or delete the data, reverse the decision made with the help of automated data processing or to take into account the data subject's objection to the control of personal data.
- *Legal basis:* Article 22 of the Act No. CXII of 2011. (Before 2012: Article 17 of the Act No. LXIII of 1992)
- *Type of procedure:* civil procedure
- *Possibilities of appeal:* The first instance decisions of the court may be appealed by any party, the intervener and by any person to whom any provision of the decision may be of concern.<sup>27</sup>
- *Burden of proof:* Each element of the claim has to be proven by the plaintiff (complainant),<sup>28</sup> except that the data has been controlled in compliance with the relevant legislation.<sup>29</sup>
- *Available mechanism to lower the burden of proof:* In this procedure the burden of proof is reversed: according to the Act, the data controller shall be obliged to prove that the data has been controlled in compliance with the relevant legislation.<sup>30</sup>
- *Requirement of legal representation:* Legal representation is not required.<sup>31</sup>
- *Is there free legal advice/representation available from a public body (please specify the public body)?* The Justice Service of Ministry of Public Administration (*Közigazgatási és Igazságügyi Minisztérium Igazságügyi Szolgálat*) and Justice Legal Aid Service (*Jogi Segítségnyújtó Szolgálat*) may give professional legal advice and representation in courts in the course of asserting rights and resolving legal disputes for the socially disadvantaged people.<sup>32</sup>
- *Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?* NDPA is entitled to intervene in the proceeding in favour of the data subject.<sup>33</sup>
- *Cost of procedure:* The procedure itself is free of charge.<sup>34</sup> However, the costs of legal representation, and in case of refusing the motion by the court, the costs of the respondent shall be refunded.
- *Average duration of procedure:* According to the National Office for the Judiciary, no statistical data exist on the average duration of this procedure. Producing such data would require the examination of every single file on the courts on county level.<sup>35</sup>

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<sup>27</sup> Hungary, Act No. III of 1952 Art. 233 (1).

<sup>28</sup> Hungary, Act No. III of 1952 Art. 164 (1).

<sup>29</sup> Hungary, Act No. CXII of 2011 Art. 22 (2).

<sup>30</sup> Hungary, Act No. CXII of 2011 Art 22 (2).

<sup>31</sup> Hungary, Act No. III of 1952 73/A (1) bb).

<sup>32</sup> Hungary, Act No. LXXX of 2003.

<sup>33</sup> Hungary, Act No. CXII of 2011 Art. 22 (4).

<sup>34</sup> Hungary, Act No. XCIII of 1990 Art. 57 (1) o).

<sup>35</sup> Response letter by the National Office for the Judiciary to data request. See footnote No.3.

- *Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011:* According to the National Office for the Judiciary, no statistical data exist on the outcomes of this procedure. Producing such data would require the examination every single file on the courts on county level.<sup>36</sup>

#### **Ad Redress Mechanism Number 2: Compensation:**

- *Range of possible outcomes:* The controller shall be obliged to compensate for damages caused to others as an outcome of the illegitimate control of the data of the data subject or a breach of data security requirements. The range of compensation is not limited by the law.
- *Legal basis:* Article 23 of the Act No. CXII of 2011. (Before 2012: Article 18 of the Act No. LXIII of 1992)
- *Type of procedure:* civil procedure
- *Possibilities of appeal:* The first instance decisions of the court may be appealed by any party, the intervener, and by any person to whom the jurisdiction may be of concern.<sup>37</sup>
- *Burden of proof:* The damage/harm and causality between the harm and data handling has to be proven by the plaintiff (complainant),<sup>38</sup> but not the unlawfulness of data processing. Since the data controller is responsible for obeying the law, to get relieved from liability he/she has to prove the lawfulness of the data handling.<sup>39</sup> The liability of the data controller is more severe than in normal cases: the controller shall be exempt from liability only if he/she is able to prove that the damages were caused by circumstances beyond their immediate control.
- *Available mechanism to lower the burden of proof:* In this procedure the burden of proof is reversed: according to the Act, the data controller shall be obliged to prove that the data has been controlled in compliance with the relevant legislation.<sup>40</sup>
- *Requirement of legal representation:* Legal representation is not required.<sup>41</sup>
- *Is there free legal advice/representation available from a public body (please specify the public body)?* The Justice Service of the Ministry of Public Administration and the Justice Legal Aid Service may give professional legal advice and representation in courts in the course of asserting rights and resolving legal disputes for the socially disadvantaged people.<sup>42</sup>
- *Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?* NDPA is entitled to intervene in the proceeding in favour of the data subject.<sup>43</sup>
- *Cost of procedure:* The procedure itself is free of charge.<sup>44</sup> However, the costs of legal representation, and, in case of refusing of the motion by the court, the costs of the defendant shall be refunded.

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<sup>36</sup> Response letter by the National Office for the Judiciary to data request. See footnote No.3.

<sup>37</sup> Hungary, Act No. III of 1952 Art. 233 (1).

<sup>38</sup> Hungary, Act No. III of 1952 Art. 164 (1).

<sup>39</sup> Hungary, Act No. CXII of 2011 Art. 22 (2).

<sup>40</sup> Hungary, Act No. CXII of 2011 Art. 22 (2).

<sup>41</sup> Hungary, Act No. III of 1952 Art. 73/A (1) bb).

<sup>42</sup> Hungary, Act No. LXXX of 2003.

<sup>43</sup> Hungary, Act No. LXXX of 2003 Art. 22 (4).

<sup>44</sup> Hungary, Act No. XCIII of 1990 Art. 57 (1) o).



- *Average duration of procedure:* According to the National Office for the Judiciary, no statistical data exist on the average duration of this procedure. Producing such data would require the examination of every single file on the courts on county level.<sup>45</sup>
- *Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011:* According to the National Office for the Judiciary, no statistical data exist on the outcomes of this procedure. Producing such data would require the examination of every single file on the courts on county level.<sup>46</sup>

### **Ad Redress Mechanism Number 3: Notice and Recommendation after an Investigation of the NDPA:**

- *Range of possible outcomes:* a) NDPA issues a notice in which it instructs the controller to redress the threat b) if this proves to be ineffective, NDPA shall make recommendations to the supervisory body of the data controller, c) NDPA may also directly make recommendations, if this would effectively address the legal anomaly or terminate the present threat of legal infringement, d) NDPA may recommend the amendment, repeal or drafting of legislation if the legal anomaly or its present threat ensues from any kind of unnecessary, ambiguous or inappropriate provision of governing legislation or the lack of or deficient nature of the legal regulation. If the notification or the recommendation issued is ineffective, NDPA may e) launch a data protection administrative procedure (see Redress Mechanism No. 4) or f) may compile a public report containing the facts, findings and conclusions of the case.
- *Legal basis:* Article 52-59 of the Act No. CXII of 2011.
- *Type of procedure:* Procedure of the data protection authority. The investigation does not qualify as an administrative procedure.<sup>47</sup> It is similar to an ombudsman-type investigation, however, NDPA is not an ombudsman institution.
- *Possibilities of appeal:* No such possibility exists.
- *Burden of proof:* The complainant is not obliged to prove. In the complaint, he or she has to render probable an infringement of law in connection with the control of personal data, or a present threat to this. NDPA itself shall investigate the case.
- *Available mechanism to lower the burden of proof:* Not applicable.
- *Requirement of legal representation:* Legal representation is not required. (This is an ombudsman-like redress mechanism, see above under “*Type of procedure*”.)
- *Is there free legal advice/representation available from a public body (please specify the public body)?* No.
- *Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?* Yes, the right to initiate the investigation of the NDPA is not restricted to the data subjects affected. Anyone is entitled to request an investigation on the grounds of infringement of law in connection with the control of personal data.<sup>48</sup>
- *Cost of procedure:* The NDPA conducts the investigation free of charge.<sup>49</sup>

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<sup>45</sup> Response letter by the National Office for the Judiciary to data request. See footnote No.3.

<sup>46</sup> Response letter by the National Office for the Judiciary to data request. See footnote No.3.

<sup>47</sup> Hungary, Act No. CXII of 2011 Art. 52 (2).

<sup>48</sup> Hungary, Act No. CXII of 2011 Art. 52 (1).

<sup>49</sup> Hungary, Act No. CXII of 2011 Art. 52 (4).

- *Average duration of procedure:* Maximum 2 months,<sup>50</sup> an average cannot be calculated due to the novelty of this procedure.
- *Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011:* This redress mechanism can only be launched after the 1st of January, 2012, therefore outcomes in the past years are not available. However, it shows some similarities to Redress Mechanism No. 8, so the outcomes described there can be instructive.

#### **Ad Redress Mechanism Number 4: Order, Prohibition or Fine in a Data Protection Administrative Procedure:**

- *Range of possible outcomes:* NDPA may a) order the correction of unauthentic personal data; b) order the blocking, deletion or destruction of illegally controlled personal data; c) prohibit the illegal control or processing of the personal data; d) prohibit the transfer of the personal data to other countries; e) order notification of the data subject, should the controller have unlawfully refused to, and f) impose a fine. The fine may range from 100,000 HUF to 10,000,000 HUF (approx. from €350 EUR to €35,000) To decide whether a fine should be imposed and to determine its amount, NDPA shall consider all circumstances of the case, with special regard to the size of the scope of individuals affected by the legal offense, its weight and repetition. In the first five months of the year of 2012 the Authority imposed a fine three times, amounting to 800,000; 2,000,000 and 5,000,000 HUF (€2 760, 6,900 and 17,240, respectively).<sup>51</sup>
- *Legal basis:* Article 60-61 of the Act No. CXII of 2011.
- *Type of procedure:* Administrative procedure of the NDPA.<sup>52</sup> The procedure can only be launched ex officio. It may not qualify as a procedure launched on request, even if it is preceded by an investigation based on a complaint and carried out by the NDPA. However, in such cases the complainant has to be notified of the administrative procedure.<sup>53</sup>
- *Possibilities of appeal:* No appeal may be lodged.<sup>54</sup> A petition for the judicial review of the decision may be lodged.<sup>55</sup>
- *Burden of proof:* The complainant is not the client of the case (see above under “*Type of procedure*”). NDPA ascertains the relevant facts of the case ex officio, and specifies the type and extent of evidence admissible, independent from the clients' requests concerning evidence. However, in the process of ascertaining the relevant facts of the case all circumstance that may be of importance shall be taken into consideration.<sup>56</sup>
- *Available mechanism to lower the burden of proof:* Not applicable.
- *Requirement of legal representation:* Not applicable, the complainant does not act as a client of the case (see above under “*Type of procedure*”).
- *Is there free legal advice/representation available from a public body (please specify the public body)?* Not applicable.
- *Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?* No.

<sup>50</sup> Hungary, Act No. CXII of 2011 Art. 55 (1).

<sup>51</sup> The website of NDPA, <http://naih.hu/hatosagi-hatarozatok.html>, All hyperlinks were accessed on 23 May 2012.

<sup>52</sup> Hungary, Act No. CXII of 2011 Art. 60 (2).

<sup>53</sup> Hungary, Act No. CXII of 2011 Art. 60 (3).

<sup>54</sup> Hungary, Act No. CXL of 2004 Art. 100 (1) d).

<sup>55</sup> Hungary, Act No. CXL of 2004 Art. 109 (1).

<sup>56</sup> Hungary, Act No. CXL of 2004 Art. 3 (2) b).

- *Cost of procedure:* The procedure costs nothing to the complainant, as he or she is not the client of the procedure (see above).
- *Average duration of procedure:* According to the relevant legislation the procedure should be completed within two months.<sup>57</sup> No average can be calculated so far due to the novelty of the redress mechanism.
- *Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011:* This redress mechanism can be launched only after the 1st of January, 2012, therefore outcomes for the past years are not available. However, it shows some similarities to Redress Mechanism No. 8, so the outcomes described there can be instructive.

#### **Ad Redress Mechanism Number 5: Claim for Infringement of Personality Rights:**

- *Range of possible outcomes:* A person whose personality rights have been violated has the following options under civil law, depending on the circumstances of the case: a) demand a court declaration of the occurrence of the infringement, b) demand to have the infringement discontinued and the perpetrator restrained from further infringement; c) demand that the perpetrator makes restitution in a statement or by some other suitable means and, if necessary, that the perpetrator, at his own expense, makes an appropriate public disclosure for restitution; d) demand the termination of the injurious situation and the restoration of the previous state by and at the expense of the perpetrator and, furthermore, to have the effects of the infringement nullified or deprived of their injurious nature; e) file charges for punitive damages in accordance with the liability regulations under civil law. If the amount of punitive damages that can be imposed is insufficient to mitigate the gravity of the actionable conduct, the court shall also be entitled to penalise the perpetrator by ordering him to pay a fine to be used for public purposes.
- *Legal basis:* Article 84 of the Act No. IV of 1959.
- *Type of procedure:* civil procedure
- *Possibilities of appeal:* The decisions of the court of the first instance may be appealed by the party, the intervener and by any person to whom any provision of the decision may be of concern.<sup>58</sup>
- *Burden of proof:* Each element of the claim has to be proven by the plaintiff (complainant).
- *Available mechanism to lower the burden of proof:* No.
- *Requirement of legal representation:* legal representation is not required.<sup>59</sup>
- *Is there free legal advice/representation available from a public body (please specify the public body)?* The Justice Service of the Ministry of Public Administration and the Justice Legal Aid Service may give professional legal advice and representation in courts in the course of asserting rights and resolving legal disputes for the socially disadvantaged people.<sup>60</sup>
- *Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?* No.

<sup>57</sup> Hungary, Act No. CXII of 2011 Art. 60 (5).

<sup>58</sup> Hungary, Act No. III of 1952 Art. 233. (1).

<sup>59</sup> Hungary, Act No. III of 1952 Art. 73/A (1) bb).

<sup>60</sup> Hungary, Act No. LXXX of 2003 on Legal Aid Service.

- *Cost of procedure:* 36,000 HUF (€125) for the first instance, the same for the second instance. Additionally: the costs of legal representation. In case of refusing the motion by the court the costs of the respondent shall be refunded.
- *Average duration of procedure:* According to the National Office for the Judiciary, no statistical data exist on the average duration of this procedure. Producing such data would require the examination of every single file on the courts on county level.<sup>61</sup>
- *Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011:* According to the National Office for the Judiciary, no statistical data exist on the outcomes of this procedure. Producing such data would require the examination of each and every file on the courts on county level.<sup>62</sup>

#### **Ad Redress Mechanism Number 6: Order or Fine in Supervisory Procedure upon Sending Electronic Advertisement without Prior Consent of the Recipient:**

- *Range of possible outcomes:* The National Media and Infocommunications Authority (NMIA) (*Nemzeti Média- és Hírközlési Hatóság (NMHH)*) may order to cease the infringement or discontinue the unlawful conduct, and may impose an electronic commerce fine ranging anywhere between 50,000 HUF and 500,000 HUF (approximately €150-1,500).<sup>63</sup> The amount of the electronic commerce fine associated with electronic advertisements shall be established after deliberating all conditions of the case, in particular the scope and weight of infringed consumer rights, the duration and re-occurrence of the infringement. Upon a repeated infringement, an electronic commerce penalty associated with electronic advertisements may be imposed repeatedly.<sup>64</sup>
- *Legal basis:* Article 16/C of the Act No CVIII of 2001.
- *Type of procedure:* Supervisory procedure of the NMIA.<sup>65</sup> The procedure can be launched both on request and ex officio. In proceedings conducted upon request, the complainant qualifies as a client, and the proceeding is directed at investigating whether a violation of the right to informational self-determination occurred. The complainant may also initiate an ex officio procedure without becoming the client of the proceeding,<sup>66</sup> in this case the NMIA investigates the application of the relevant law.
- *Possibilities of appeal:* The first instance body is the Office of the NMIA. An appeal against the first instance decision may be filed with the chairperson of the Board of the NMIA. Ultimately, a petition for the judicial review of the decision may be lodged.<sup>67</sup>
- *Burden of proof:* Not applicable. This is not a contradictory procedure: when proceeding, the NMIA exercises its supervisory power.
- *Available mechanism to lower the burden of proof:* No.
- *Requirement of legal representation:* Not applicable. This is a supervisory procedure
- *Free legal advice/representation available from a public body:* Not applicable. This is a supervisory procedure conducted ex officio even if the procedure was instituted upon request.

<sup>61</sup> Response letter by the National Office for the Judiciary to data request. See footnote No. 3.

<sup>62</sup> Response letter by the National Office for the Judiciary to data request. See footnote No. 3.

<sup>63</sup> Hungary, Act No CVIII of 2001 Art 16/D (1).

<sup>64</sup> Hungary, Act No CVIII of 2001 Art 16/D (2).

<sup>65</sup> Hungary, Act No CVIII of 2001 Art 16/C (1).

<sup>66</sup> Hungary, Act No CVIII of 2001 Art 16/C (3).

<sup>67</sup> Hungary, Act No CVIII of 2001 Art 16/B (2).

- *Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?* No.
- *Cost of procedure:* If the complainant is not a client in the proceeding (see above under “Type of procedure”), the proceeding is free of charge. In cases initiated upon request (see above under “Type of procedure”), a fiscal charge of 3,000 HUF (€10) has to be paid.<sup>68</sup>
- *Average duration of procedure:* no data is available.<sup>69</sup>
- *Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011:* According to the statistical data provided by the NMIA in 2009, 307 supervisory procedures were conducted, of which 165 investigations were ended with an order to discontinue the unlawful conduct, and 24 proceedings with imposing a fine. The total amount of fines imposed this year was 4,295,000 HUF (around €15,000), the highest fine reached the maximum amount (500,000 HUF, €1,500). In 2010, 118 supervisory procedures were conducted, of which 86 investigations were ended with an order to discontinue the unlawful conduct, and three proceedings with imposing a fine. The total amount of fines imposed this year was 300,000 HUF (around €1,000), the highest one stood at 150,000 HUF (around €500). In 2011, 89 supervisory procedures were conducted, of which 75 investigations were ended with an order to discontinue the unlawful conduct, and six proceedings by imposing a fine. The total amount of fines imposed this year was 650,000 HUF (around €2150), the highest fine imposed by the NMIA was 100,000 HUF (around €300). In response to the data request the NMIA noted the number of staff members dealing with such proceedings at NMIA has decreased from three people to one person during the three years.

#### **Ad Redress Mechanism Number 7: Punishment (imprisonment) in Criminal Suit for misuse of personal data:**

- *Range of possible outcomes:* Imprisonment up to one year, in classified cases imprisonment up to two and three years.
- *Legal basis:* Article 177/A of the Act No. IV of 1978.
- *Type of procedure:* criminal procedure
- *Possibilities of appeal:* Second and third instances (as regulated by the Code of Criminal Proceedings).
- *Burden of proof:* The victim (from the viewpoint of this report: complainant) in his or her denunciation does not have to prove anything, however, he or she has to provide information needed to start an investigation. As it is a criminal proceeding, the prosecutor has to prove each element of the statutory definition of the misuse of personal data. The following facts have to be proven: 1) the violation of the statutory provisions governing the protection and processing of personal data, 2) the perpetrator acted in the pursuit of unlawful financial gain or advantage, OR the act imposed significant injury to the interests of another person or persons, 3) the perpetrator is engaged in the unauthorised and inappropriate processing of personal data, OR fails to take measures to ensure the security of data. Besides this in another form of this crime 1) the violation of the statutory provisions governing the protection and processing of personal data, 2) failure to notify the data subject as required by law, and 3) significant injury to the interests of another person or persons as a consequence of the act of the perpetrator have to be proven. As the act only punishes the

<sup>68</sup> Hungary, Act No. XCIII of 1990 Art. 29 (1).

<sup>69</sup> The letter of the National Media and Infocommunications Authority responding to the data request did not include any information on the duration of proceedings.

intentionally committed misuse of personal data, the intent of the perpetrator is also to be proven: the perpetrator wishes the consequences of his/her act OR acquiesces to these consequences. In classified cases it is also to be proven that the crime was committed on sensitive data, OR the perpetrator is a public official or, the crime was committed in the course of discharging a public duty.

- *Available mechanism to lower the burden of proof:* No.
- *Requirement of legal representation:* Not applicable. The victim of the crime is not an actor of the criminal procedure but he or she may be present at some procedural actions.
- *Free legal advice/representation available from a public body:* Not applicable, the crime is to be prosecuted by the general prosecutor.
- *Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?* No.
- *Cost of procedure:* The procedure costs nothing to the victim/complainant.
- *Average duration of procedure:* no data are available.<sup>70</sup>
- *Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011:* According to the Unified System of Criminal Statistics of the Investigative Authorities and of Public Prosecution (*Egységes Nyomozóhatósági és Ügyészési Bűnügyi Statisztika* (ENYÜBS) in 2009, 164 accusations of the crime of misuse of personal data were made, of which 2 were rejected, investigation was ended without further measures in 53 cases; 96 indictments took place (58,5% of the overall number of cases); 13 cases were closed in other ways or diversion (for instance the prosecutor decided on the postponement of filing the indictment, or referred the case to mediation). In 2009, the court delivered a judgement in 24 cases affecting 28 accused parties, ordered imprisonment in 3 cases, and ordered other criminal sanctions in 18 cases. In 2010, 552 accusations of the crime of misuse of personal data were made, of which 3 were rejected, investigation was ended without further measures in 24 cases; 428 indictments took place (77,5% of the overall number of cases); 97 cases were closed in other ways or diversion. In 2010, the court delivered a judgement in 21 cases, affecting 22 accused parties, ordered imprisonment in 3 cases, and ordered other criminal sanctions in 16 cases. In 2011, 677 accusations of the crime of misuse of personal data were made, of which 3 were rejected, investigation was ended without further measures in 34 cases; 509 indictments took place (75,2% of the overall number of cases); 131 cases were closed in other ways or diversion. In 2011, the court delivered a judgement in 50 cases affecting 60 accused parties, ordered imprisonment in 15 cases, and sentenced other criminal sanctions in 38 cases.<sup>71</sup>

#### **Ad Redress Mechanism Number 8: Advise, Recommendation and Order of the Data Protection Commissioner (operated until 1 January 2012):**

- *Range of possible outcomes:* Upon noticing any unlawful data processing operation, the Data Protection Commissioner advised the data controller to cease such operation. The Data Protection Commissioner had authority to issue a recommendation generally or for a specific data controller, or for new regulations and for the amendment of legislation pertaining to data processing. If the controller or processor failed to comply and cease the unlawful data processing operation, the data protection commissioner might have ordered that unlawfully

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<sup>70</sup> The letter of the Prosecution Service responding to the data request did not include any information on the duration of proceedings.

<sup>71</sup> Response letter by the Prosecution Service of Hungary to data request, dated on 22<sup>th</sup> May 2012.

processed data be blocked, deleted or destroyed, or might have prohibited the unauthorised data management and/or processing operations and suspended any operation aimed at transferring data abroad. The Data Protection Commissioner had the right to announce these illegitimate data management and/or processing operations to the public and identify the controller (processor) and the measures proposed.

- *Legal basis*: Article 25-27 of Act No LXIII of 1992 (NB: repealed, no longer valid).
- *Type of procedure*: Data protection authority, ombudsman-like investigation of an ombudsperson.
- *Possibilities of appeal*: No.
- *Burden of proof*: The complainant was not obliged to prove. He or she had to render probable in the complaint an infringement of law in connection with the control of personal data, or a present threat to this. The case was investigated by the Data Protection Commissioner.
- *Available mechanism to lower the burden of proof*: Not applicable.
- *Requirement of legal representation*: No.
- *Is there free legal advice/representation available from a public body (please specify the public body)?* No.
- *Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?* No, in compliance with the function of ombudsman-type investigation, the right to initiate the investigation of the Data Protection Commissioner was restricted to the data subjects affected.<sup>72</sup>
- *Cost of procedure*: The Data Protection Commissioner conducted the procedure free of charge.<sup>73</sup>
- *Average duration of procedure*: 71 days (83 days in 2009, 66 days in 2010 and 65 days in 2011).<sup>74</sup>
- *Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011*: In the year of 2009, the Data Protection Commissioner received 1,079 complaints related to data protection and found 391 complaints justified, 150 partly justified. In one case the Commissioner issued an order, in two cases he issued a recommendation. In the year of 2010: 1,374 complaints were received, 391 complaints were found justified, 190 partly justified. In two cases the Data Protection Commissioner issued an order, and four recommendations were issued. In 2011: 949 complaints were received, 226 complaints were found justified, 83 partly justified. (In 131 closed cases the outcome is not registered.) In one case the Data Protection Commissioner issued an order, and no recommendation was issued.<sup>75</sup>

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<sup>72</sup> Hungary, Act No LXIII of 1992 Art. 27 (1) (NB: repealed, no longer valid).

<sup>73</sup> Hungary, Act No LIX of 1993 Art 16 (3) (NB: repealed, no longer valid).

<sup>74</sup> Response letter by the National Authority for Data Protection and Freedom of Information to data request, dated on 11<sup>th</sup> May 2012.

<sup>75</sup> Response letter by the National Authority for Data Protection and Freedom of Information to data request, dated on 11<sup>th</sup> May 2012.