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Ad Hoc Information Report

Data protection: Redress mechanisms and their use

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Bulgarian Helsinki Committee

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The available redress mechanisms concerning data protection in Bulgaria could be classified in three main groups - 1) judicial redress before the administrative courts (including awarding of compensation); 2) remedies provided by the national data protection authority; and 3) pursuing prosecution of the perpetrators through criminal avenues. The first and the second group are regulated by the Law for Protection of Personal Data (LPPD- the official translation of the Law in the Bulgarian legislation)¹ which is the main legal act regulating the material and procedural prerequisites for pursuing remedies in the field of data protection. The third group refers to several material law provisions in the Criminal Code² criminalizing behavior concerning certain grave personal data violations, as well as to procedural law provisions in the Criminal Procedure Code³ which stipulate a general procedure about how criminal liability is realized and perpetrators prosecuted (no specific procedure is envisaged for crimes concerning data protection). However, when it comes to personal data protection the Criminal Code and the Criminal Procedure Code make reference to the LPPD provisions.

The Bulgarian legislation contains general privacy protection provisions, set in the Constitution of the Republic of Bulgaria (Art. 32) and the Law for Protection of Personal Data (Art.1 (2)). There are also some specific provisions concerning data gathering, processing and access in several other legal acts, for instance the Law on Bulgarian Identity Documents⁴, Law on Measures against Money Laundering⁵, Labour Code⁶, Law on Ministry of Interior⁷, Law on Public Health⁸, Law on Civic Registration⁹, etc. The protection of the rights and interests of individuals in these specific areas could be carried out through the general aforementioned data protection mechanisms, or through general judicial remedies in the administrative law sector - judicial review of administrative acts, actions or omission against public authorities.

As regards the first general data protection redress mechanism, the nature of the **judicial redress** consists of filing a complaint by the affected individual against the data controllers (public law or private law entities) challenging their acts or particular actions. The complaint is lodged before the relevant administrative court - before the competent administrative courts (28 administrative courts functioning in Bulgaria) or the Supreme Administrative Court, in compliance with the general jurisdiction rules. These proceedings are governed by Art. 39 of the LPPD and the Administrative Procedure Code¹⁰ and in them it is open to the individuals to also claim compensation for any suffered damages as a result of unlawful processing of personal data.

For the purposes of the present research the researcher requested information from the 28 administrative courts and the Supreme Administrative Court for the use of this mechanism over the last three years (2009-2011). In the request the researcher asked for statistical information about the cases filed under the LPPD and the cases in which

¹ Bulgaria, Law for Protection of Personal Data (*Закон за защита на личните данни*) (1.01.2002), Art. 38 and 39 (1.01.2002), available in English at: www.cdpd.bg/en/index.php?p=element&aid=373

² Bulgaria, Criminal Code (*Наказателен кодекс*) (1.05.1968), Art. 148a (9.08.1997), Art. 308, para. 2 (3.04.2004), Art. 319e, paras. 1 and 2 (1.10.2002), available in Bulgarian at: <http://lex.bg/laws/ldoc/1589654529>.

³ Bulgaria, Criminal Procedure Code (*Наказателно процесуален кодекс*) (29.04.2006), available in Bulgarian at: <http://lex.bg/laws/ldoc/2135512224>.

⁴ Bulgaria, Law on Bulgarian Identity Documents (*Закон за българските лични документи*) (1.04.1999), available in Bulgarian at: <http://lex.bg/laws/ldoc/2134424576>.

⁵ Bulgaria, Law on Measures against Money Laundering (*Закон за мерките срещу изпирането на пари*) (28.07.1998), Art. 5-15, available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2134420482>.

⁶ Bulgaria, Labour Code (*Кодекс на труда*) (01.01.1987), Art. 66, 287, 349, available in Bulgarian at: <http://lex.bg/laws/ldoc/1594373121>.

⁷ Bulgaria, Law on Ministry of Interior (*Закон за Министерството на вътрешните работи*) (01.05.2006), Art. 59, 151-167, available in Bulgarian at: <http://www.nspbzn.mvr.bg/NR/rdonlyres/C2743BF3-D7C3-4899-997D-E5B99E08414C/0/ZMVR.doc>.

⁸ Bulgaria, Law on Public Health (*Закон за здравето*) (01.01.2005), Art. 27-28, 86, 132, 141, 147a, 197, available in Bulgarian at: <http://lex.bg/laws/ldoc/2135489147>.

⁹ Bulgaria, Law on Civic Registration (*Закон за гражданската регистрация*) (31.07.1999), available in Bulgarian at: <http://lex.bg/laws/ldoc/2134673409>.

¹⁰ Bulgaria, Administrative Procedure Code (*Административнопроцесуален кодекс*) (12.07.2006), available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2135521015>.

compensation was also claimed, the number of finalized cases and their outcome, including awarded compensation or cases closed by friendly settlement, the average length of the proceedings, the number of cases in which there has been a legal representation or legal aid, the average court fees and expenses and the cases in which the Commission intervened as an interested party. The researcher has received replies by 25 of the administrative courts, 20 of which replied that for that period they did not have any action brought under Art. 39 of the LPPD. The Varna Administrative Court provided information that for 2010 one such case was registered and that in 2011 the Commission stepped as an interested party in one case.¹¹ The Sofia City Administrative Court¹² refused to provide information treating the request as not falling under the notion of 'public information' and informing the researcher moreover that in any case they could not provide such information as no specific classification of the cases under the LPPD has been carried out - that type of cases fall into the category of "other administrative cases" in which group fall various types of cases which meant that if they wished to provide such detailed information they needed to check each and every case. Three other courts requested from the researcher to pay a fee for the provision of information or to specify the form in which the researcher would like to receive the requested information. So far the researcher has not received any further responses from them. No response has been received by the Supreme Administrative Court either.

The **remedies by the national data protection authority** are provided by the Bulgarian Commission for Personal Data Protection (hereinafter referred to as "the Commission") as an alternative of the judicial redress. These remedies consist either of filing a complaint by the affected individual, or filing a request by an interested party (which could be both an individual or legal entity) for carrying out of an inspection of a particular data controller.¹³ As regards the remedy in the form of complaint, it is examined by the Commission according to its rules of procedure regulated in the LPPD and the Rules on the Activity of the Commission for Personal Data Protection and its Administration.¹⁴ The Commission examines the complaint and pronounces a decision within 30 days from the filing thereof in which it can issue compulsory instructions to the controller (stipulating a particular behavior in order to abide by the data protection requirements, e.g. obliging the data controller to allow access to the data, forbidding any further processing of data, instructing them about their future behavior etc.), set a time limit for the controller to cease the violation, or impose an administrative penalty (a fine or pecuniary sanction).¹⁵ The unfavorable decisions of the Commission could be appealed against before the Supreme Administrative Court which could overturn them¹⁶ (this situation was valid until May 2011; an amendment in the Administrative Procedure Code¹⁷ now provides that the decisions of the Commission are reviewed as a first instance by the Sofia City Administrative Court). This could be viewed as a supplementary remedy for the individuals/data controllers dissatisfied with the Commission's decision. As far as the requests for carrying out of an inspection of a data controller is concerned, the Commission, if it considers that the request raises serious issues that require such supervision, will carry out an ad-hoc inspection of the data controller which could lead to issuing of a compulsory instruction or imposition of a fine in case a violation has been found.¹⁸

¹¹ Bulgaria, Written reply No. 12P-0219, Varna Administrative Court, dated 2.04.2012.

¹² Bulgaria, Written reply No. 108/01.04.2012, Sofia City Administrative Court, dated 11.04.2012.

¹³ Bulgaria, Law for Protection of Personal Data, Art.38 (1.01.2002).

¹⁴ Bulgaria, Law for Protection of Personal Data, Art. 12, para.3 (1.01.2002).

¹⁵ Bulgaria, Rules on the Activity of the Commission for Personal Data Protection and its Administration (*Правилник за дейността на Комисията за защита на личните данни и нейната администрация*) (10.02.2009), available in Bulgarian at: <http://www.cdpd.bg/?p=element&aid=36>.

¹⁶ Bulgaria, Law for Protection of Personal Data, Art. 38, para. 2 (1.01.2002).

¹⁷ According to the *2011 Annual Report of the Commission for Personal Data Protection* there is a tendency of upholding the Commission's decisions by the courts due to its compliance with their instructions and jurisprudence, p.33, available at: <http://www.cdpd.bg/index.php?p=element&aid=457>.

¹⁸ Bulgaria, Law on Amendments and Additions in the Administrative Procedure Code (24.05.2011), also *2011 Annual Report of the Commission for Personal Data Protection*, p. 30.

¹⁹ Bulgaria, Law for Protection of Personal Data, Art. 12, para. 3 (1.01.2002).

The researcher has requested statistical information from the Commission concerning the use of the both types of redress mechanisms under its auspices. In particular, the researcher inquired about the number of complaints with which the Commission has been seized in the period of 2009-2011 by individuals, the outcome of the cases (including the type of the imposed measures and size of the sanctions, or termination of the proceedings due to friendly settlement), the number of the Commission's decisions that have been appealed against, the legal representation and legal aid in the proceedings before it, the representation by NGOs, the average length of the proceedings, the number of requests for carrying out an ad-hoc inspection of data controllers and their outcome, the number of cases in which a temporary ban on data processing has been imposed. The researcher received detailed information which is presented in the annexes. The trend that could be observed from the presented information is the growing number of complaints filed each year before the Commission (from 158 complaints for 2009 to 458 for 2011); the relatively small number of cases in which the complainants have been represented by a lawyer (e.g. only 12 cases for 2011) or the lack of use of legal aid in these proceedings; the low number of settled cases outside the procedure before the Commission (e.g. only 9 for 2011) and hence the probable lack of use of mediation in such cases; the growing number of imposed pecuniary sanctions and the comparable steady number of issued mandatory instructions over the examined period; the raise of the total amount of pecuniary sanctions imposed; as well as the decreasing number of the use of the mechanism of requests for carrying out ad hoc inspections of data controllers.¹⁹

Moreover, from the annual reports of the Commission on its activities it appears that the main subject of complaints and requests for information concerns contractual relationship between data subjects and data controllers involving data processing, as well as access to personal data.²⁰ The main sectors which concerned the filed complaints are the telecommunication sector, information technologies, media, healthcare, banking, social security and elections. The most frequent violations of data protection are related to processing of data, informing the data subjects about such processing, storing of personal data and refusals of access to personal data.²¹

As far as **the criminal law remedies** are concerned, there are several offences in the Criminal Code which envisage criminal liability for grave violations of data protection. Art. 148a of the Code provides since 2000 for a criminal liability in the form of imposition of a fine in case of dissemination of information, including personal data, obtained illegally from the archives of the Ministry of Interior. Since 2004 Art.308, para.2 of the same act provides for sanctioning with imprisonment for forging of official documents certifying certain personal data, and Art.319e, paras. 1 and 2 provide for since 2002 imprisonment for dissemination of passwords and codes of access to computer data or systems as a result of which personal information is disclosed. For the purposes of the present research the researcher has inquired statistical information from ten district courts in the biggest Bulgarian cities about how these provisions have been implemented. The researcher received responses from 8 district courts, four of which specified that they did not have cases under the respective provisions of the Criminal Code for the period from 2009 to 2011. One of them required payment of a fee for the provision of information and no further response from it has been received yet, and three courts specified the number of cases heard before them under the respective provisions (presented in the annexes). From the presented information it appears that the main criminal law remedy used in the field is liability for forging of documents; however it is not clear which of the cases had been initiated on the basis of complaints by individuals and which - *ex officio* by the competent prosecution authorities.

¹⁹Bulgaria, Written reply No. R-1/27.04.2012, Commission for Personal Data Protection, dated 27.04.2012.

²⁰Bulgaria, *2010 and 2011 Annual Reports*, Commission for Personal Data Protection, pp. 8-13 and pp. 20-34 respectively, available in Bulgarian at: <http://www.cdpd.bg/index.php?p=element&aid=286> and <http://www.cdpd.bg/mdex.php?p=element&aid=457> and in English at:

<http://www.cdpd.bg/en/index.php?p=element&aid=286> and <http://www.cdpd.bg/en/index.php?p=element&aid=457>

²¹Bulgaria, *2010 and 2011 Annual Reports*, Commission for Personal Data Protection, pp. 8-13 and pp. 20-34 respectively, available in Bulgarian at: <http://www.cdpd.bg/index.php?p=element&aid=286> and <http://www.cdpd.bg/mdex.php?p=element&aid=457> and in English at:

<http://www.cdpd.bg/en/index.php?p=element&aid=286> and <http://www.cdpd.bg/en/index.php?p=element&aid=457>

As apparent from the collected information the judicial type of remedy is rarely used by the individuals for protection of their personal data. Obviously, the possibility for compensation for violations in this field does not represent a sufficient incentive for the persons to pursue this remedy, provided that they and their legal advisors are sufficiently aware of its existence. The affected individuals obviously prefer to use the redress mechanisms available through the proceedings before the Commission which are much faster, free of costs, sufficiently simplified and thus not requiring legal representation, and the possibility for imposition of sanctions and mandatory instructions on the part of the Commission are apparently viewed as sufficient redress for the violations committed and the damages incurred. It is not clear to what extent the individuals seek the criminal law remedies as redress mechanisms but apparently they are rarely used and mainly in cases of very grave violations of the data protection.

These conclusions are based on the official information provided by the state authorities on the basis of the researcher's requests for access to public information. From the annual reports of the Commission it also appears that the individuals and legal entities address more often the Commission not only with complaints but also with requests for clarifications and interpretations of the provisions of the LPPD. For 2011 these requests were 102 (it is not clear what the proportion of filed requests by data subjects and by data controllers is, but apparent from the questions asked the predominant part concerned processing of personal data of data subjects)²².

Apart from the annual reports of the Commission on its activities the researcher found no other sources of information concerning the use of available remedies in the field of data protection, neither by the state authorities, which are rarely addressed by individuals concerning their data protection,²³ nor by NGOs or legal practitioners.

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. Judicial | Finding of a | Administrati | 0²⁴ | 1²⁵ | 0²⁶ |

²³ Bulgaria, News report concerning a survey carried out by Gallup International about the data protection in Bulgaria, available at: <http://lex.bg/bg/news/view/47321>.

²³ Bulgaria, Statement of the Bulgarian Ombudsman, stating that he is rarely addressed with such matters by the individuals, news report, supra., available at: <http://lex.bg/bg/news/view/47321>.

²⁴ Bulgaria, According to the official information received by 25 administrative courts in Bulgaria: Written reply No RD-08-120, Burgas, Administrative Court, dated 30.03.2012; Written reply No.IP-0210, Varna Administrative Court, dated 2.04.2012; Written reply No.122, Veliko Turnovo Administrative Court, dated 2.04.2012; Written reply No. 276, Vidin Administrative Court, dated 9.04.2012; Written reply No. 4-1-18, Vraca Administrative Court, dated 30.03.2012; Written reply No.51, Garbovo Administrative Court, dated 3.04.2012; Written reply No. 287, Dobrich Administrative Court, dated 30.03.2012; Written reply No.078, Lovech Administrative Court, dated 27.03..2012; Written reply

redress against acts or actions of the data controllers, before the administrative courts
breach of the data protection legislation; awarding of compensation, if claimed
ve courts

| | | | | | |
|---|---|--|-------------------------|-------------------------|-------------------------|
| 2. Filing a complaint before the Personal Data Protection Commission | Issue of compulsory instructions to data controllers stipulating a particular behaviour; setting a time limit for the controller to cease the violation, imposing an administrative penalty (fine or pecuniary sanction) | Personal Data Protection Commission | 158²⁷ | 221²⁸ | 458²⁹ |
| 3. Filing a | Issue of | Personal Data | 21³⁰ | 24³¹ | 7³² |

No.171, Kurdzhali Administrative Court, dated 26.03..2012; Written reply No.62, Montana Administrative Court, dated 3.04.2012; Written reply No.RD-17-02, Pazardzhik Administrative Court, dated 28.03..2012; Written reply No.231, Pernik Administrative Court, dated 27.03..2012; Written reply No. 1277, Plovdiv Administrative Court, dated 4.04.2012; Written reply No.719-1-137, Razgrad Administrative Court, dated 27.03..2012; Written reply No.AC-82, Ruse Administrative Court, dated 9.04.2012; Written reply No. 82-A, Silistra Administrative Court, dated 2.04.2012, Written reply No.RD-11-200, Sliven Administrative Court, dated 27.03..2012; Written reply No.208, Smolyan Administrative Court, dated 3.04.2012; Written reply No.108, Sofia City Administrative Court, dated 10.04.2012; Written reply No.1158, Sofia Regional Administrative Court, dated 9.04.2012; Written reply No. 284, Stara Zagora Administrative Court, dated 27.03.2012; Written reply No.520, Haskovo Administrative Court, dated 28.03.2012; Written reply No.285, Yambol Administrative Court, dated 28.03.2012; Written reply No.RD- 12-29, Kyustendil Administrative Court, dated 28.03.2012,

²⁵ Bulgaria, Written reply No.IP-0210, Varna Administrative Court, dated 2.04.2012.

²⁶ Bulgaria, Written reply No RD-08-120, Burgas, Administrative Court, dated 30.03.2012; Written reply No.IP-0210, Vama Administrative Court, dated 2.04.2012; Written reply No.122, Veliko Turnovo Administrative Court, dated 2.04.2012; Written reply No. 276, Vidin Administrative Court, dated 9.04.2012; Written reply No. 4-1-18, Vraca Administrative Court, dated 30.03.2012; Written reply No.51, Garbovo Administrative Court, dated 3.04.2012; Written reply No. 287, Dobrich Administrative Court, dated 30.03.2012; Written reply No.078, Lovech Administrative Court, dated 27.03..2012; Written reply No.171, Kurdzhali Administrative Court, dated 26.03..2012; Written reply No.62, Montana Administrative Court, dated 3.04.2012; Written reply No.RD-17-02, Pazardzhik Administrative Court, dated 28.03..2012; Written reply No.231, Pernik Administrative Court, dated 27.03..2012; Written reply No. 1277, Plovdiv Administrative Court, dated 4.04.2012; Written reply No.719-1-137, Razgrad Administrative Court, dated 27.03..2012; Written reply No.AC-82, Ruse Administrative Court, dated 9.04.2012; Written reply No. 82-A, Silistra Administrative Court, dated 2.04.2012, Written reply No.RD-11-200, Sliven Administrative Court, dated 27.03..2012; Written reply No.208, Smolyan Administrative Court, dated 3.04.2012; Written reply No.108, Sofia City Administrative Court, dated 10.04.2012; Written reply No. 1158, Sofia District Administrative Court, dated 9.04.2012; Written reply No. 284, Stara Zagora

Administrative Court, dated 27.03.2012; Written reply No.520, Haskovo Administrative Court, dated 28.03.2012; Written reply No.285, Yambol Administrative Court, dated 28.03.2012; Written reply No.RD- 12-29, Kyustendil Administrative Court, dated 28.03.2012.

²⁷ Bulgaria, Written reply No. P452, Commission for Personal Data Protection, dated 9 April 2012.

²⁸ Bulgaria, Written reply No. P452, Commission for Personal Data Protection, dated 9 April 2012.

²⁹ Bulgaria, Written reply No. P452, Commission for Personal Data Protection, dated 9 April 2012.

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|--|---|------------------------------|--|--|--|
| request before the Personal Data Protection Commission for carrying out of an ad-hoc inspection of data controllers | compulsory instruction; imposition of fine or pecuniary sanction | Protection Commission | | | |
| 4. Criminal law remedies | fine or imprisonment | District Courts | 37, 3 and 0 respectively³³ | 99,19 and 2 respectively³⁴ | 57,17 and 3 respectively³⁵ |
| | | | | | |

Detailed information

Redress Mechanism Number 1 (Judicial redress against acts or actions of the data controllers (public law or private law entities) before the administrative courts):

- Range of possible outcomes - finding a breach of the data protection legislation; awarding compensation, if such is claimed
- Legal basis: Art. 39 of the LPPD
- Type of procedure: administrative
- Possibilities of appeal: two-instance procedure before the Supreme Administrative Court as a first instance and the Supreme Court of Cassation as a second instance.
- Burden of proof: If the complainant claims that a certain act issued by the data controller is unlawful the latter has to establish that the legal requirements for its issuing have been met. If the complainant claims that the data controller has refused to issue him a certain act the complainant has to establish that the conditions for issuing such were present in his case. In the complaint the affected person has to indicate the evidence he/she wants to be collected and has to submit the written evidence which is at his/her disposal. If additional evidence is required the judge has to indicate to the party the need for their collection.³⁶
- Available mechanism to lower the burden of proof: No specific mechanisms for lowering the burden of proof exist in the proceedings under the LPPD. Nevertheless, there are certain mechanisms that could help the complainants to better present their case and present proof concerning their allegations. Thus, the administrative courts have the general obligation to indicate to the parties that they fail to present evidence for the circumstances important for the adjudication of the dispute as well as to correct their statements for formal mistakes and ambiguities.³⁷ Moreover, the court must examine all the requirements for legality of the administrative acts and to ensure that they are present, and not only those pointed by the complainant.³⁸ If the act is null and void ab initio the court must declare it null and void on its own motion, that is regardless of the fact whether the

³⁰ Bulgaria, Written reply No. P452, Commission for Personal Data Protection, dated 9 April 2012.

³¹ Bulgaria, Written reply No. P452, Commission for Personal Data Protection, dated 9 April 2012.

³² Bulgaria, Written reply No. P452, Commission for Personal Data Protection, dated 9 April 2012.

³³ Bulgaria, Written reply No. 1, Pazardzhik District Court, dated 6.04.2012; Written reply No. 165, Burgas District Court, dated 21.04.2012; Written reply No. 433, Sofia District Court, dated 20.04.2012.

³⁴ Bulgaria, Written reply No. 1, Pazardzhik District Court, dated 6.04.2012; Written reply No. 165, Burgas District Court, dated 21.04.2012; Written reply No. 433, Sofia District Court, dated 20.04.2012.

³⁵ Bulgaria, Written reply No. 1, Pazardzhik District Court, dated 6.04.2012; Written reply No. 165, Burgas District Court, dated 21.04.2012; Written reply No. 433, Sofia District Court, dated 20.04.2012.

Bulgaria, Administrative Procedure Code, Art. 168 and Art. 170-171.

³⁷ Bulgaria, Administrative Procedure Code, Art. 9, para. 3 and Art. 171, para. 4.

³⁸ Bulgaria, Administrative Procedure Code, Art. 168, para. 1.

complainant has made such a claim or not.³⁹ The court can also, upon its own initiative, commission expert's reports and order inspection on the spot.⁴⁰

- Requirement of legal representation: The complainant can represent and defend themselves in person in the proceedings.⁴¹
- Is there free legal advice/representation available from a public body (please specify the public body)? There is a possibility for a legal aid provided by the National Bureau for Legal Aid (a state institution) under the Legal Aid Act for which the complainant has to apply and fulfill the statutory criteria for receiving social aid and the court will assess, on the basis of presented documents, if he or she has no means to pay for a legal representation.⁴²
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? - The Civil Procedure Code which regulates the matters about legal representation before the administrative courts does not provide for a possibility for NGOs to initiate proceedings on behalf of the affected individuals. NGOs, authorities or third persons in general can step in the proceedings and help the party in the case if they have a legal interest from the judgment.⁴³
- Cost of procedure: The Administrative Procedure Code stipulates that costs and expenses are not due unless when a person appeals against an administrative act.⁴⁴ No information is available about the average costs and expenses in the proceedings on the LPPD.
- Average duration of procedure: There is no available information about the average length of the proceedings. The courts are required to observe the procedural time limits within which they have to perform certain actions, such as scheduling the first hearing in the case within a 2-month time limit from the lodging of the complaint, or pronouncing the judgment within one month from the last court hearing.⁴⁵
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011 - no available information exists

Ad Redress Mechanism Number 2 (Filing a complaint before the Commission for Personal Data Protection by the affected individuals):

- Range of possible outcomes - Issue of compulsory instructions to data controllers stipulating a particular behavior; setting a time limit for the controller to cease the violation, imposing an administrative penalty (fine or pecuniary sanction the size of which depends on the nature of the violation)
- Legal basis: (Art. 38 of the Law for Protection of Personal Data)
- Type of procedure: administrative before the data protection authority
- Possibilities of appeal: two court instances, the first being the Sofia City Administrative Court and the second - the Supreme Administrative Court.
- Burden of proof: The complainants are required to point out in their complaint the alleged violations of data protection.⁴⁶ They are not necessarily required to present evidence. In the proceedings before the Commission, the latter has wide powers in collecting evidence *ex officio*, such as commissioning an inspection, collection of evidence or requiring observations from third persons.⁴⁷ It has the powers also to start proceedings against a data controller on its own initiative.⁴⁸

³⁹ Bulgaria, Administrative Procedure Code, Art. 168, para. 2.

⁴⁰ Bulgaria, Administrative Procedure Code, Art. 171, para. 2.

⁴¹ Bulgaria, Civil Procedure Code, Art. 26-28.

⁴² Bulgaria, Legal Aid Act, (1.01.2006), Art. 21-23.

⁴³ Bulgaria, Civil Procedure Code, Art. 218-219.

Bulgaria, Administrative Procedure Code, Art. 12, para. 3.

⁴⁵ Bulgaria, Administrative Procedure Code, Art. 157 and Art. 172, para. 1.

⁴⁶ Bulgaria, Rules on the Activity of the Commission for Personal Data Protection and its Administration, Art. 30, para. 1.

⁴⁷ Bulgaria, Rules on the Activity of the Commission for Personal Data Protection and its Administration, Art. 38, paras. 1 and 2.

⁴⁸ Bulgaria, Rules on the Activity of the Commission for Personal Data Protection and its Administration, Art. 29, para. 1.

- 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 the proceedings before the Commission, the latter is active in investigating the violation and establishing it. The affected individuals do not necessarily need to be active in presenting evidence. In a few cases the proceedings end with the withdrawal of the complaint because the complainant receives a satisfactory response or action by the data controller (1 case for 2009; 2 cases for 2010 and 9 cases for 2011).⁴⁹
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own? There is no requirement for legal representation in the proceedings; the persons can present their case on their own. According to the statistical information received by the Commission, in a small number of cases the complainants are represented by a lawyer - in 3 cases for 2009, in 9 cases for 2010 and in 12 cases for 2011.⁵⁰
- Is there free legal advice/representation available from a public body (please specify the public body)? The Legal Aid Act provides for a possibility to request legal aid for proceedings before courts. From its wording it is not very clear if legal aid in proceedings before other tribunals or judicial institutions is possible to be received. According to the statistical information received

⁴⁹ Bulgaria, Written reply No. P452, Commission for Personal Data Protection, dated 9 April 2012.

⁵⁰ Bulgaria, Written reply No. P452, Commission for Personal Data Protection, dated 9 April 2012.

by the Commission, there are no cases for the period from 2009 to 2011 in which legal aid has been requested or provided.⁵¹

- Is there locus standi for DP authorities, civil society organisations and associations to initiate⁵² the active in procedure? The Administrative Procedure Code which governs the proceedings before the Commission envisages a possibility for the complainants to be represented before the administrative authorities by other citizens or organizations with a power of attorney certified by a notary office.⁵² NGOs, authorities or third persons can step in the proceedings if they have a legal interest in taking part.⁵³ The public prosecutor can also initiate or step in the proceedings when he considers that an important state or public interest is at stake.⁵⁴ According to the statistical information received by the Commission, in 2009 only in one case the complainant was represented by a civil society organisation, for 2010 and 2011 no such representation was carried out.⁵⁵
- Cost of procedure: No costs are incurred by the complainants in the proceedings before the Commission.⁵⁶
- Average duration of procedure: According to the statistical information received by the Commission, the average length of proceedings for 2009 has been 1 month, for 2010 - 1 month and a half, for 2011 - 2 months.⁵⁷
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. For 2009, from 158 complaints filed before the Commission, the latter adjudicated 64 of them, 19 of which were found well-founded. Twenty-nine of the Commission's decisions were appealed against before the court, 22 of the appealed cases were finalized during the year and in 16 of them the Commission's decisions were upheld by the courts. For 2010 the filed complaints were 221, the Commission decided 115 cases, 25 of which were found well-founded. Sixty-one of the Commission's decisions were appealed against before the court, 16 of the appealed cases were finalized during the year and in 9 of them the Commission's decisions were upheld by the courts. For 2011 the complaints were 458, the Commission decided 224 cases, 52 of which were found well-founded. Sixty-one of the Commission's decisions were appealed against before the court, 24 of the appealed cases were finalized during the year and in 15 of them the Commission's decisions were upheld by the courts.⁵⁸ The imposed measures by the Commission for 2009 were 13 mandatory instructions and 6 pecuniary sanction, the size of which was not determined in the decision of the Commission but in a later decision (the Commission does not provide information about the amounts of the sanctions eventually imposed). For 2010, there were 15 fines and pecuniary sanctions imposed in the amount of 130,000 BGN (66,666 EUR), and 10 mandatory instructions issued. For 2011, the imposed fines and pecuniary sanctions were 42 in the amount of 441,500 BGN (226,410 EUR), and 10 mandatory instructions were issued.⁵⁹

Ad Redress Mechanism Number 3 (Filing a request before the Commission for Personal Data Protection for carrying out of an ad-hoc inspection of data controllers):

- Range of possible outcomes (issue of compulsory instruction; imposition of fine or pecuniary sanction)
- Legal basis: (Law for Protection of Personal Data, Art. 12, para.3)
- Type of procedure: administrative before the data protection authority
- Possibilities of appeal: no

⁵¹ Bulgaria, Written reply No. P452, Commission for Personal Data Protection, dated 9 April 2012.

⁵² Bulgaria, Administrative Procedure Code, Art. 18, para. 2.

⁵³ Bulgaria, Administrative Procedure Code, Art. 27, paras. 1 and 2.

⁵⁴ Bulgaria, Administrative Procedure Code, Art. 16, para. 1.

⁵⁵ Bulgaria, Written reply No. P452, Commission for Personal Data Protection, dated 9 April 2012.

⁵⁶ Bulgaria, Administrative Procedure Code, Art. 12, para. 3.

⁵⁷ Bulgaria, Written reply No. P452, Commission for Personal Data Protection, dated 9 April 2012.

⁵⁸ Bulgaria, Written reply No. P452, Commission for Personal Data Protection, dated 9 April 2012.

⁵⁹ Bulgaria, Written reply No. P452, Commission for Personal Data Protection, dated 9 April 2012.

- Burden of proof: The interested party filing the request does not have to prove anything; the Commission carries out the investigation and the establishment of a possible violation.
- Available mechanism to lower the burden of proof: No
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own? No need for legal representation.
- 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? There is no need for locus standi for filing a request for an ad-hoc inspection.
- Cost of procedure: no costs
- Average duration of procedure: No available information.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. For 2009, 21 requests by interested persons have been filed for an ad-hoc inspection of data controllers, in two cases mandatory instructions were issued, in eight cases were imposed pecuniary sanctions in the total amount of 85,000 BGN (43,589 EUR), and in 11 cases no violations were found. For 2010 the number of the requests filed were 24, in two cases mandatory instructions were issued, in nine cases were imposed pecuniary sanctions in the total amount of 36,500 BGN (18,717 EUR) , in 10 cases no violations were found and three cases were pending. For 2011 the filed requests were seven, no violations were found.⁶⁰

Ad Redress Mechanism Number 4 (criminal law remedies):

- Range of possible outcomes - fines, imprisonment
- Legal basis: (Art. 148a of the Criminal Code which provides for a criminal liability in the form of imposition of a fine in case of dissemination of information, including personal data, obtained illegally from the archives of the Ministry of Interior; Art.308, para.2 of the same act which provides for sanctioning with imprisonment for forging of official documents certifying certain personal data, and Art. 319e, paras. 1 and 2 of the same act providing imprisonment for dissemination of passwords and codes of access to computer data or systems as a result of which personal information is disclosed)
- Type of procedure: criminal
- Possibilities of appeal: 2nd and 3rd instances
- Burden of proof: The required proof is "beyond reasonable doubt" but it has to be established by the prosecuting authorities. The complainant may participate in the proceedings as a private prosecutor and civil claimant and assist the public prosecution in the establishment of the criminal liability and guilt of the perpetrators).⁶¹
- Available mechanism to lower the burden of proof: Not applicable
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own? The complainant may participate in the proceedings as a private prosecutor and civil claimant; he/she does not have to be legally represented.
- Is there free legal advice/representation available from a public body (please specify the public body)? The complainant participating in the proceedings as a private prosecutor and/or civil claimant can benefit from legal aid if he or she presents proof of lack of means to afford a lawyer and would like to be represented by a lawyer and if the interests of justice so require. In such cases the court examining the case as first instance will appoint him or her a legal aid lawyer.⁶²
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? The participation of the public prosecutor is

Bulgaria, Written reply No. P452, Commission for Personal Data Protection, dated 9 April 2012.

⁶¹ Bulgaria, Criminal Procedure Code, Art. 75, 76 and 84.

⁶² Bulgaria, Criminal Procedure Code, Art. 100.

mandatory.⁶³ Only the persons affected by the violation and who suffered damages can participate in the proceedings.⁶⁴

- Cost of procedure: No court fees are paid for participation. If the complainant participating as a private prosecutor and civil claimant does not benefit from a legal aid and is represented by a lawyer, he or she bears the fees for legal representation which vary according to the lawyer's tariff. If the accused is eventually found guilty, the convicted person is ordered to pay back the costs incurred by the private prosecutor and civil claimant.⁶⁵
- Average duration of procedure: According to the information received by several district courts, the length of proceedings is ranging from 13 days to 1 year.⁶⁶
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011. The researcher received responses from 8 out of 10 approached district courts. Four of them specified that they did not have cases under the respective provisions of the Criminal Code for the period from 2009 to 2011.⁶⁷ One court required payment of a fee for providing information and the researched has not received further reply from it.⁶⁸ Three courts provided information that in 2009 respectively 37, 3 and 0 criminal proceedings have been initiated concerning the respective offences; in 2010 the cases were respectively 99, 19 and 2, and in 2011 they were respectively 57, 17 and 3.⁶⁹

Bulgaria, Criminal Procedure Code, Art. 268.

⁶⁴ Bulgaria, Criminal Procedure Code, Art. 76 and 84.

⁶⁵ Bulgaria, Criminal Procedure Code, Art. 189-190.

⁶⁶ Bulgaria, Written reply No. 165, Burgas District Court, dated 21.04.2012; Written reply No. 433, Sofia District Court, dated 20.04.2012.

⁶⁷ Bulgaria, Written reply No. 298, Pleven District Court, dated 27.03.2012; Written reply No. 227, Lovech District Court, dated 27.03.2012; Written reply No. 3054, Ruse District Court, dated 06.04.2012; Written reply No. 402, Varna District Court, dated 21.04.2012.

⁶⁸ Bulgaria, Written reply No. 4863, Plovdiv District Court, dated 30.03.2012;

⁶⁹ Bulgaria, Written reply No. 1, Pazardzhik District Court, dated 6.04.2012; Written reply No. 165, Burgas District Court, dated 21.04.2012; Written reply No. 433, Sofia District Court, dated 20.04.2012.