

**DENMARK**

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Ad Hoc Information Report

Data protection: Redress mechanisms and their use

2012

Danish Institute for Human Rights

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

Redress Mechanism Number	Type of possible outcomes of procedure	first Instance	Total Number of times this procedure was initiated in 2009 (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	Access to data, rectification, blocking of specific data, criticism, publication of criticism, <sup>1</sup> order to discontinue a processing operation, order to rectify, erase or block	The Danish Data Protection Agency (DPA) ( <i>Datatilsynet</i> )	200 <sup>2</sup> /70 <sup>3</sup>	222 <sup>4</sup> /90 <sup>5</sup>	242 <sup>6</sup> /95 <sup>7</sup>

<sup>1</sup> The DIHR notes that even though access to data, rectification or blocking of data are rights, the enforcement of these rights by the DPA will most certainly be seen as at least some redress of breaches of these rights.

<sup>2</sup> Number of complaints according to DPA annual report 2008-2009 available in Danish at: [www.datatilsynet.dk/publikationer/datatilsynets-aarsberetninger/](http://www.datatilsynet.dk/publikationer/datatilsynets-aarsberetninger/) (31.05.2012).

<sup>3</sup> Uncertain figure on the number of times one or more of the listed redress mechanisms have been used in 2009. This data has not been obtainable for the DIHR despite numerous enquiries. The figures are subjects to uncertainty since the DPA has a limited possibility to get statistics automatically on the results of the cases.

<sup>4</sup> Number of complaints according to DPA annual report 2010 available in Danish at: [www.datatilsynet.dk/publikationer/datatilsynets-aarsberetninger/](http://www.datatilsynet.dk/publikationer/datatilsynets-aarsberetninger/) (31.05.2012)

<sup>5</sup> Uncertain figure on the number of times one or more of the listed redress mechanisms have been used in 2010. This data has not been obtainable for the DIHR despite numerous enquiries. The figures are subjects to uncertainty since the DPA has a limited possibility to get statistics automatically on the results of the cases.

<sup>6</sup> This number of complaints is only estimate from the DPA annual report 2011, since it has not been possible to obtain the exact number from the DPA. The report is available in Danish at: [www.datatilsynet.dk/om-datatilsynet/sagsbehandlingstider/](http://www.datatilsynet.dk/om-datatilsynet/sagsbehandlingstider/) (31.05.2012)

<sup>7</sup> Uncertain figure on the number of times one or more of the listed redress mechanisms have been used in 2011. This data has not been obtainable for the DIHR despite numerous enquiries. The figures are subjects to uncertainty since the DPA has a limited possibility to get statistics automatically on the results of the cases.

	<p><b>specific data, prohibition of a specified procedure in connection with the processing of data, order to implement specific technical and organizational security measures, requests to data controlling authorities concerning security measures and bringing notifications to the police for investigation and prosecution.</b></p>				
2	<p><b>Order to delete specific information, criticism, order to publish replies or the decision of the Press Council or parts thereof.<sup>8</sup></b></p>	<p><b>Danish Press Council (DPC) (<i>Pressenævnet</i>)</b></p>	0 <sup>9</sup>	0 <sup>10</sup>	0 <sup>11</sup>

<sup>8</sup> Act no 430 of 1 June 1994 on Information-Databases of the Mass Media (Lov nr 430 af 1 Juni 1994 om massemediers informationsdatabaser) section 13. Failure to comply with such orders are punishable with fine or imprisonment cf section 16 of the act. The act is available in Danish at [www.retsinformation.dk/forms/r0710.aspx?id=59461](http://www.retsinformation.dk/forms/r0710.aspx?id=59461) (03.08.2012).

<sup>9-10</sup> As the only body competent on the area of the information-databases of the mass media the DPC has not yet received any complaints in this area according to answer by the DPC to enquiry made the 21 may 2012 and 2 august 2012. The DPC is also redress body for cases regarding press ethics witch might very well have connotations of data protection, however in these cases the purpose of the redress is to maintain good press ethics not data protection as such. In cases regarding press ethics the DPC can express criticism and find that plaintiff has a right to a reply, cf. The Media Liability Act section 34 and 36 , consolidated act no. 85 of 9 February 1998 (Medieansvarsloven, lovbekendtgørelse nr. 85 af 9. Februar 1998), available in Danish at: [www.retsinformation.dk/Forms/R0710.aspx?id=86861](http://www.retsinformation.dk/Forms/R0710.aspx?id=86861) (3. August 2012). Some cases concern both press ethics and the right to a reply. Other cases only one of the two issues. The

3	Order on change of practice, criticism and disciplinary sanctions.	The Danish Court Administration (DCA) ( <i>Domstolsstyrelsen</i> )	-	-	- <sup>12</sup>
4	Compensation ( <i>godtgørelse</i> )	The city courts ( <i>Byretterne</i> )	0 <sup>13</sup>	0	1
5	Fine, Imprisonment	Public prosecutor ( <i>Anklagemyndigheden</i> )	9/8	10/7	10/7 <sup>14</sup>
6	Damages ( <i>erstatning</i> )	City courts	0 <sup>15</sup>	0	1

## Detailed information

### Redress Mechanism Number 1:

Access to data, rectification, blocking of specific data, criticism, publication of criticism, order to discontinue a processing operation, order to rectify, erase or block specific data, prohibition of a specified procedure in connection with the processing of data, order to implement specific technical and organizational security measures, requests to data controlling authorities concerning security measures and bringing notifications to the police for investigation and prosecution.

- The Danish Data Protection Agency (DPA) (*Datatilsynet*).

- Range of possible outcomes: Access to data, rectification, blocking of specific data, criticism, publication of criticism, order to discontinue a processing operation, order to rectify, erase or block specific data, prohibition of a specified procedure in connection

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DPC does not order the editor to publish the decision in all cases. In 2009 to 2011 the DPC respectively received and invoked redress mechanisms in 36/33 cases in 2009, 39/23 cases in 2010 and 34/31 cases in 2011. See annual report 2011, page 11 available in Danish at: : [www.pressenaevnet.dk/Publikationer.aspx](http://www.pressenaevnet.dk/Publikationer.aspx) (02.08.2012). Answer by the DPC to enquiry made the 21 may 2012.

<sup>12</sup> From 2008-2011 there has been 42 complaints at the DCA regarding data protection, however there is no available information on the allocation on the complaints on the years 2009-2011.

<sup>13</sup> There is no available information on the number of cases at the city court as these decisions are not public accessible.

<sup>14</sup> According to a search in the Police's data base performed by the Director of Public Prosecutions. Accordingly the Police received in 2009 9 reports of violation of the Act on Processing of Personal Data. 8 of them were ended with judgment, warning or penalty notice. In 2010 10 reports were filled at the Police. 7 ended with judgment, warning or penalty notice. In 2011 10 reports were filled, 7 ended with judgment, warning or penalty notice. According to annual report from 2009, the DPA has filed 26 police reports from 2000-2008 according to DPA annual report 2008-2009 available in Danish at: [www.datatilsynet.dk/publikationer/datatilsynets-aarsberetninger/](http://www.datatilsynet.dk/publikationer/datatilsynets-aarsberetninger/) (31.05.2012). One case from 2011 is the only published case on the issue within the period, see: <http://jura.karnovgroup.dk/toc/433-1-2004/r/3/3/161656> (31.05.2012).

<sup>15</sup> There is no available information on the number of cases at the city court as these decisions are not publicly accessible, only one case on the issue have been published from higher courts within the period, see below. <http://jura.karnovgroup.dk/toc/433-1-2004/r/3/3/161656> (31.05.2012).

with the processing of data, order to implement specific technical and organizational security measures, requests to data controlling authorities concerning security measures and bringing notifications to the police for investigation and prosecution.

- Legal basis: Section 59 in the Act on Processing of Personal Data (PPD) (*Persondataloven*).<sup>16</sup>
- Type of procedure: Data protection authority
- Possibilities of appeal: Decisions made by the DPA are final and may not be appealed by any other administrative body.<sup>17</sup> They may, however, be brought before the courts.<sup>18</sup>
- Burden of proof: The general principle of burden of proof applied in Danish administrative procedures on a written basis.<sup>19</sup>
- Available mechanism to lower the burden of proof: None.
- Requirement of legal representation: There is no requirement for legal representation.
- Is there free legal advice/representation available from a public body? Every administrative authority has the duty to a reasonable extent to offer free guidance and assistance within its area of competence.<sup>20</sup> Additionally free legal aid can be obtained from various voluntary legal aids.<sup>21</sup>
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? No.
- Cost of procedure: The complaints-procedure is free at the DPA.
- Average duration of procedure: 267 days for complaints concerning credit enquiry agencies / credit-rating agencies (*kreditplysningsbureauer*), and 292 days for other complaints.<sup>22</sup>

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<sup>16</sup> According to section 59 in the PPD act the DPA may express criticism or order a private data controller to discontinue a processing operation which is in violation of the act and to rectify, erase or block specific data undergoing such processing. The Data Protection Agency may furthermore ban private data controllers use of a specified procedure in connection with the processing of data if the DPA finds that there is a considerable risk that data is processed in violation of the act. The DPA can order private controllers to implement specific technical and organizational security measures to prevent illegal processing of data, accidental or unlawful destruction or alteration of data, disclosure of data to unauthorized persons, abuse of data or other unlawful forms of processing. In special cases the DPA may in special cases issue a prohibitory or mandatory injunction against data processors.

<sup>17</sup> PPD section 61

<sup>18</sup> The Danish Constitution (*Grundloven*) section 63.

<sup>19</sup> In administrative complaints procedures in Denmark, the principle of inquisitorial procedure applies implying an obligation of the DPA to procure the information that is necessary to decide the complaint including both information of a factual and legal nature. The inquisitorial procedure principle in administrative complaints also plays a role in legal proceedings where administrative authorities act as a party. In Danish legal discourse this principle is called: *Officialmaksimen*. See: '8.5. *Om tilsynsmyndighedernes undersøgelsespligt og kompetence*', available in Danish at: [www.resumedatabase.im.dk/im/site.aspx?p=1207](http://www.resumedatabase.im.dk/im/site.aspx?p=1207) (23 May 2012).

<sup>20</sup> Act no 1365 of 7 December 2007 on Public Administration (*forvaltningsloven*) section 7, available in Danish at: [www.retsinformation.dk/forms/r0710.aspx?id=105127](http://www.retsinformation.dk/forms/r0710.aspx?id=105127).

<sup>21</sup> Advokatvagten (*The Lawyers watch*), Københavns Retshjælp (*The Legal Aid of Copenhagen*), Københavnske Advokaters Retshjælp (*The Legal Aid of Lawyers Offices in Copenhagen*), Kritisk Retshjælp (*Critical Legal Aid*), Gellerupparkens Retshjælp (*The Legal Aid of Gellerupparken*), Studenterrådets Retshjælp (*The Legal Aid of the Students Council*), Retshjælpen i Vestergade – Odense (*The Legal Aid in Vestergade – Odense*), Århus Retshjælp (*The Legal Aid in Århus*), De Jurastuderendes Retshjælp (*The Legal Aid of the Law Students*), Nettet's Gratis Retshjælp (NGR) (*The Free Legal Aid on the Net*).

<sup>22</sup> Annual report of DPA, 2011 (Datatilsynets årsrapport 2011) available in Danish at: [www.datatilsynet.dk/fileadmin/user\\_upload/dokumenter/AArsrapporter/Aarsrapport\\_2011.pdf](http://www.datatilsynet.dk/fileadmin/user_upload/dokumenter/AArsrapporter/Aarsrapport_2011.pdf) (23 May 2011)

- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, and 2011: Information or statistics of the outcome is not publicly accessible and The Danish Institute for Human Rights, DIHR (*Institut for Menneskerettigheder*) has not been able to obtain the information from the DPA.<sup>23 24</sup> However the DPA has made a search in the database in order to get a figure on the cases where DPA have used the mentioned redress mechanisms. The data is subject to uncertainty since the DPA has a limited possibility to get statistics automatically on the results of the cases.
  - In 2009 the DPA received 200 complaints and used one or more of the mentioned redress mechanisms in minimum 61 complains and 11 cases on the DPA's own initiative.
  - In 2010 the DPA used one or more of the mentioned redress mechanisms in minimum 68 complains and 23 cases on the DPA's own initiative.
  - In 2011 the DPA used one or more of the mentioned redress mechanisms in minimum 75 complains and 20 cases on the DPA's own initiative.

Redress Mechanism Number 2: Order to delete specific information, criticism, order to publish replies or the decision of the Press Council or parts thereof – The Danish Press Council (DPC) (*Pressenævnet*).<sup>25</sup>

- Range of possible outcomes: Criticism, order to publish replies or the decision of the Press Council or parts thereof.<sup>26</sup>
- Legal basis: The Media Liability Act (*Medieansvarsloven*) section 43 and section 49.<sup>27</sup>
- Type of procedure: Administrative.
- Possibilities of appeal: Decisions made by the DPC are final and may not be appealed by any other administrative body.<sup>28</sup> The decision made by the Council, whether a media has breached the Press Ethics or not, cannot be brought before the courts with the Council as part. This is considered a litigation between the media and plaintiff. However, this does not exclude the possibility for the DPC to be brought before the court in cases where a part claims a decision is void due to the administrative procedure or the like.<sup>29</sup>

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<sup>23</sup> Enquiries made the 9 December 2011, 30 April, 21 May, 24 May, 4 June and 12 June 2012.

<sup>24</sup> The DPA has a limited possibility to get statistics automatically on the results of the cases. However the DPA has made a search in the database in order to get a figure on the cases where DPA have used the mentioned redress mechanisms. In 2009 the DPA used one or more of the mentioned redress mechanisms in minimum 61 complains and 11 cases on the DPA's own initiative. In 2010 the DPA used one or more of the mentioned redress mechanisms in minimum 68 complains and 23 cases on the DPA's own initiative. In 2011 the DPA used one or more of the mentioned redress mechanisms in minimum 75 complains and 20 cases on the DPA's own initiative.

<sup>25</sup> Act no 430 of 1 June 1994 on Information-Databases of the Mass Media (*Lov nr 430 af 1 Juni 1994 om massemediers informationsdatabaser*) section 13. Failure to comply with such orders is punishable with fine or imprisonment of section 16 of the act. The act is available in Danish at [www.retsinformation.dk/forms/r0710.aspx?id=59461](http://www.retsinformation.dk/forms/r0710.aspx?id=59461) (03.08.2012).

<sup>26</sup> Available in Danish at: <http://www.pressenaevnet.dk/Klagevejledning.aspx> (22<sup>nd</sup> of May 2012).

<sup>27</sup> According to section 1 subsection 6-10 the press is to some extent exempted from the PPD. In these cases complaints on data protection must be issued to the DCA.

<sup>28</sup> The Media Liability Act section 50: <http://www.pressenaevnet.dk/Information-in-English/The-Media-Liability-Act.aspx>

<sup>29</sup> The Danish Constitution (*Grundloven*) section 63. A Supreme Court sentence of October 15, 2003 regarding a lawsuit against the DPC can be read in Danish in *Weekly Law Review (Ugeskrift for Retsvæsen)* 2003, page 71.

- Burden of proof: The general principle of burden of proof applied in Danish administrative procedures on a written basis.<sup>30</sup>
- Available mechanism to lower the burden of proof: None.
- Requirement of legal representation: There is no requirement for legal representation.
- Is there free legal advice/representation available from a public body? Every administrative authority has the duty to a reasonable extent to offer free guidance and assistance within its area of competence.<sup>31</sup> Additionally free legal aid can be obtained from various voluntary legal aids.<sup>32</sup>
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? No.
- Cost of procedure: The complaints-procedure is free at the DPC.
- Average duration of procedure: Applications for data protection procedures at the Danish Press Council have been dismissed due to a four week submission deadline after publication.<sup>33</sup>
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, and 2011: No procedures have yet been processed on the area of data protection, and there is no statistics on the number or allocation of dismissed complaints on the area.<sup>34</sup>

Redress Mechanism Number 3: - Correction, criticism - The Danish Court Administration (DCA) (*Domstolsstyrelsen*).

- Range of possible outcomes: Correction, criticism.<sup>35</sup>
- Legal basis: PPD section 67.<sup>36</sup>

<sup>30</sup> In administrative complaints procedures in Denmark, the principle of inquisitorial procedure applies implying an obligation of the DPA to procure the information that is necessary to decide the complaint including both information of a factual and legal nature. The inquisitorial procedure principle in administrative complaints also plays a role in legal proceedings where administrative authorities act as a party. In Danish legal discourse this principle is called: *Officialmaksimen*. See: '8.5. *Om tilsynsmyndighedernes undersøgelsespligt og kompetence*', available in Danish at: <http://www.resumedatabase.im.dk/im/site.aspx?p=1207> (23<sup>rd</sup> of May 2012).

<sup>31</sup> Act on Public Administration section 7.

<sup>32</sup> Advokatvagten (*The Lawyers watch*), Københavns Rets Hjælp (*The Legal Aid of Copenhagen*), Københavnske Advokaters Rets Hjælp (*The Legal Aid of Lawyers Offices in Copenhagen*), Kritisk Rets Hjælp (*Critical Legal Aid*), Gellerupparkens Rets Hjælp (*The Legal Aid of Gellerupparken*), Studenterrådets Rets Hjælp (*The Legal Aid of the Students Council*), Rets Hjælpen i Vestergade – Odense (*The Legal Aid in Vestergade – Odense*), Århus Rets Hjælp (*The Legal Aid in Århus*), De Jurastuderendes Rets Hjælp (*The Legal Aid of the Law Students*), Nettets Gratis Rets Hjælp (NGR) (*The Free Legal Aid on the Net*).

<sup>33</sup> The Media Liability Act section 34, paragraph 2.

<sup>34</sup> Answer by the DPC to enquiry made the 21<sup>st</sup> of May 2012. The DPC is also redress body for cases regarding press ethics which might very well have connotations of data protection, however in these cases the purpose of the redress is to maintain good press ethics not data protection as such. In cases regarding press ethics the DPC can express criticism and find that plaintiff has a right to a reply, cf. The Media Liability Act section 34 and 36, consolidated act no. 85 of 9 February 1998 (*Medieansvarsloven*, lov bekendtgørelse nr. 85 af 9. Februar 1998), available in Danish at:

[www.retsinformation.dk/Forms/R0710.aspx?id=86861](http://www.retsinformation.dk/Forms/R0710.aspx?id=86861) (3. August 2012). Some cases concern both press ethics and the right to a reply. Other cases only one of the two issues. The DPC does not order the editor to publish the decision in all cases. In 2009 to 2011 the DPC respectively received and invoked redress mechanisms in 36/33 cases in 2009, 39/23 cases in 2010 and 34/31 cases in 2011. See annual report 2011, page 11 available in Danish at: [www.pressenaevnet.dk/Publikationer.aspx](http://www.pressenaevnet.dk/Publikationer.aspx) (02.08.2012). Answer by the DPC to enquiry made the 21 May 2012

<sup>35</sup> Answer by the DCA to enquiry sent the 9 December 2011.

<sup>36</sup> According to section 1 subsection 4 the courts are to some extent exempted from the PPD authority. In these cases complaints must be issued to the DCA.

- Type of procedure: Administrative.
- Possibilities of appeal: Decisions made by the DCA are final and cannot be appealed to another administrative body or complained to the Danish Parliamentary Ombudsman, see the Act on Processing of Personal Data section 68, last sentence. They may, however, be brought before the courts, see The Danish Constitution (*Grundloven*) section 63.
- Burden of proof: The general principle of burden of proof applied in Danish administrative procedures on a written basis.<sup>37</sup>
- Available mechanism to lower the burden of proof: None.
- Requirement of legal representation: There is no requirement for legal representation.
- Is there free legal advice/representation available from a public body? Every administrative authority has the duty to a reasonable extent to offer free guidance and assistance within its area of competence.<sup>38</sup> Additionally free legal aid can be obtained from various voluntary legal aids.<sup>39</sup>
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? no
- Cost of procedure: The complaints-procedure is free at the DCA.
- Average duration of procedure: below two months.<sup>40</sup>
- Outcomes for 2009, 2010, 2011: From 2008-2011 10 complaints have been processed on the area of data protection. Of the 10 processed cases 4 resulted in the DCA asking a court to remove text from summaries of judgments, the court calendar or the homepage the remainder of the cases was turned down. Information on allocation of the complaints on the years 2009-2011 has not been obtainable.<sup>41 42</sup>

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<sup>37</sup> In administrative complaints procedures in Denmark, the principle of inquisitorial procedure applies implying an obligation of the DPA to procure the information that is necessary to decide the complaint including both information of a factual and legal nature. The inquisitorial procedure principle in administrative complaints also plays a role in legal proceedings where administrative authorities act as a party. In Danish legal discourse this principle is called: Officialmaksimen. See: '8.5. Om tilsynsmyndighedernes undersøgelsespligt og kompetence', available in Danish at: <http://www.resumedatabase.im.dk/im/site.aspx?p=1207> (23 May 2012).

<sup>38</sup> Act on Public Administration section 7.

<sup>39</sup> Advokatvagten (*The Lawyers watch*), Københavns Retshjælp (*The Legal Aid of Copenhagen*), Københavnske Advokaters Retshjælp (*The Legal Aid of Lawyers Offices in Copenhagen*), Kritisk Retshjælp (*Critical Legal Aid*), Gellerupparkens Retshjælp (*The Legal Aid of Gellerupparken*), Studenterrådets Retshjælp (*The Legal Aid of the Students Council*), Retshjælpen i Vestergade – Odense (*The Legal Aid in Vestergade – Odense*), Århus Retshjælp (*The Legal Aid in Århus*), De Jurastuderendes Retshjælp (*The Legal Aid of the Law Students*), Nettet's Gratis Retshjælp (NGR) (*The Free Legal Aid on the Net*).

<sup>40</sup> Answer by the DCA to enquiry sent the 9 December 2011.

<sup>41</sup> Answer by the DCA to enquiries sent the 9 December 2011 and the 21 May 2012.

<sup>42</sup> The description is not correct. From 2008-2011 in total 41 cases were registered. Not all of them were complaints. The cases are not allocated by year. Of 41 cases 10 were regular complaints about the courts processing of personal data. The last 31 were cases on DCA's own initiative or cases where DCA has been giving advice on data protection e.g. when developing IT systems, standard text, working procedures ect. 6 of the 10 regular complaints were rejected from adjudication on the merits because they concerned the hearing of a case. The DCA cannot process such complaints since they should be appealed to a higher court. In the 4 remaining cases the DCA has asked a court to remove text from summaries of judgments, the court calendar or the homepage.



Redress Mechanism Number 4 Injury (non-pecuniary damages):

- Range of possible outcomes: This answer is not given in the legislation but praxis on the area of data protection shows a range of compensation between DKK 5.000 and 25.000.<sup>43</sup>
- Legal basis: The Danish act on liability for damages (*erstatningsansvarsloven*) section 26 (1). However it follows from PPD section 69, that claims of compensation cannot be processed by the supervising authority but must be brought before the national courts.<sup>44</sup>
- Type of procedure: civil, unless the question is included in a criminal case.<sup>45</sup>
- Possibilities of appeal: 2<sup>nd</sup>, with possibility of a 3<sup>rd</sup> instants approval.
- Burden of proof: A rather heavy burden to prove that a violation has led to a personal injury of the injured party in accordance with Danish praxis.<sup>46</sup>
- Available mechanism to lower the burden of proof: None
- Requirement of legal representation: An application can be filed by the injured party without legal representation, however such representation can be imposed by the courts and is recommended.<sup>47</sup>
- Is there free legal advice/representation available from a public body (please specify the public body)? Free legal aid can be obtained from a range of voluntary services such as the Danish Victim Support (VID) (*Offerrådgivningen*, OID) or various voluntary legal aids.<sup>48</sup>
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? No
- Cost of procedure: the costs of the only two published cases where compensation has been awarded in the last 10 years has been fixed by the courts to be DKK 71.500 and 80.000, but it is well known that this only covers a part of the real expenses of the procedure.<sup>49</sup> Cost of procedure for cases not appealed from the city courts must be expected to be correspondingly cheaper.
- Average duration of procedure: The duration of the two referred cases has been 4 years, 6 months and 16 days and 1 year 4 months and 24 days respectively. Cases not appealed

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<sup>43</sup> U.2005.1131Ø, U.2007.1967V, U2008,727H and U.2011.2343H. Within the reference period compensation varies from 10-25.000.

<sup>44</sup> It is not the intention to suggest that the PDD contains a legal basis for non-pecuniary damages, but only to underline the lack of competence for the DPA to process such claims. There is no legal basis for non-pecuniary damages in the PPD. Compensation for non-pecuniary damages can only be made on the basis of other legislation. In practice The Danish act on liability for damages (*erstatningsansvarsloven*) section 26 (1).

<sup>45</sup> Administration of Justice Act, section 991.

<sup>46</sup> See Andersen, LA, in U 1977 B 241 and Unmack Larsen, BUL in U 1977 B 345

<sup>47</sup> Bjørknæs, LB, *Selvmøder*, available in Danish at: [www.retssal.dk/?page=emne&id=1700&indexid=461](http://www.retssal.dk/?page=emne&id=1700&indexid=461) (23 May 2012)

<sup>48</sup> Advokatvagten (*The Lawyers watch*), Københavns Retshjælp (*The Legal Aid of Copenhagen*), Københavnske Advokaters Retshjælp (*The Legal Aid of Lawyers Offices in Copenhagen*), Kritisk Retshjælp (*Critical Legal Aid*), Gellerupparkens Retshjælp (*The Legal Aid of Gellerupparken*), Studenterrådets Retshjælp (*The Legal Aid of the Students Council*), Retshjælpen i Vestergade – Odense (*The Legal Aid in Vestergade – Odense*), Århus Retshjælp (*The Legal Aid in Århus*), De Jurastuderendes Retshjælp (*The Legal Aid of the Law Students*), Nettet's Gratis Retshjælp (NGR) (*The Free Legal Aid on the Net*).

<sup>49</sup> See Andersen, LA, in U 1977 B 241, Unmack Larsen, BUL in U 1977 B 345 and Frandsen og Simonsen, MF and MS, 1 October 2010, DR, Penge: 'Omkostninger bliver ikke dækket i retssager' available in Danish at [www.dr.dk/Nyheder/Penge/2010/09/30/115334.htm?rss=true](http://www.dr.dk/Nyheder/Penge/2010/09/30/115334.htm?rss=true) and <http://www.retssal.dk/?page=emne&id=1014&indexid=461> (22 May 2012).

from the city courts must however be expected to be solved within six months to a year.<sup>50</sup>

- Outcomes: Only selected decisions from the Danish High Courts and Supreme Court are published in Denmark, and no final decisions on the area of data protection have been published in 2009 and 2010. However in 2011 a Supreme Court decision awarded a compensation of DKK 25.000 (approximately 3.333EU) for the processing of sensitive information from one municipality to another in violation of PPD.<sup>51</sup>

#### Redress Mechanism Number 5 Fine, imprisonment:

- Range of possible outcomes: Fines from DKK 5.000 to 10.000 have been awarded, up to four months of imprisonment is also a possible outcome.<sup>52</sup>
- Legal basis: Section 70 of the Act on Processing of Personal.<sup>53</sup>
- Type of procedure: criminal.
- Possibilities of appeal: 2<sup>nd</sup>, 3<sup>rd</sup> and further instances: Administratively decisions of the Police Commissioners not to institute criminal proceedings can be brought before the Public Prosecutors who themselves are subject to supervision by the Director of Public Prosecutions.<sup>54</sup> In addition to the administrative system decisions not to institute criminal proceedings can be brought before the courts.<sup>55</sup>
- Burden of proof: In criminal cases the burden of proof lies with the prosecution service which must prove every part of the offence in question.
- 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.: None.
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own? There is no requirement for legal representation.
- Is there free legal advice/representation available from a public body (please specify the public body)? Free legal aid can be obtained from a range of voluntary services such as the Danish Victim Support (VID) (*Offerrådgivningen*, OI) or various voluntary legal aids.<sup>56</sup>
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? No.

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<sup>50</sup> Yearly report from the Danish courts, 2011, (*Danmarks Domstoles årsrapport 2011*) available in Danish at:

[www.domstol.dk/om/publikationer/HtmlPublikationer/Aarsrapporter/Aarsrapport%202011/kap02.htm](http://www.domstol.dk/om/publikationer/HtmlPublikationer/Aarsrapporter/Aarsrapport%202011/kap02.htm)  
(22 May 2012).

<sup>51</sup> U.2011.2343H

<sup>52</sup> Annual report of the DPA 2008-2009, available in Danish at:

[www.datatilsynet.dk/fileadmin/user\\_upload/dokumenter/Aarsberetninger/Aarsberet\\_2008\\_og\\_2009.pdf](http://www.datatilsynet.dk/fileadmin/user_upload/dokumenter/Aarsberetninger/Aarsberet_2008_og_2009.pdf)  
(24 May 2012) and section 70 of PPD.

<sup>53</sup> Section 70 of the Act on Processing of Personal Data concerns criminal liability for violation of the act. For instance controllers' failure to comply with some of the DPA's decisions, requests for relevant information, conditions or prohibitory or mandatory orders are criminal offences, as well as obstruction of the DPA's access to relevant premises.. Violation of section 70 is punishable by fine or prison up to four months.

<sup>54</sup> Administration of Justice Act sections 99-101.

<sup>55</sup> The Danish Constitution (*Grundloven*) section 63.

<sup>56</sup> Advokatvagten (*The Lawyers watch*), Københavns Retshjælp (*The Legal Aid of Copenhagen*), Københavnske Advokaters Retshjælp (*The Legal Aid of Lawyers Offices in Copenhagen*), Kritisk Retshjælp (*Critical Legal Aid*), Gellerupparkens Retshjælp (*The Legal Aid of Gellerupparken*), Studenterrådets Retshjælp (*The Legal Aid of the Students Council*), Retshjælpen i Vestergade – Odense (*The Legal Aid in Vestergade – Odense*), Århus Retshjælp (*The Legal Aid in Århus*), De Jurastuderendes Retshjælp (*The Legal Aid of the Law Students*), Nettets Gratis Retshjælp (NGR) (*The Free Legal Aid on the Net*).

- Cost of procedure: please provide information on the average cost of the procedure: Reporting to the police is free of charge.
- Average duration of procedure: please provide available information: The duration of processed not appealed cases can be expected to be solved on an average of 79 days.<sup>57</sup>
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, and 2011: The only publicly available case within the timeframe is U.2011.1915Ø, where a police officer was acquitted for misuse of the criminal register (kriminalregisteret). In earlier published cases fines up to DKK 5.000 have been awarded.<sup>58</sup>

#### Redress Mechanism Number 6 - Economic damages:

- Range of possible outcomes: Economic damages depending on an actual economic loss.
- Legal basis: PPD section 69.<sup>59</sup>
- Type of procedure: civil, unless the question is included in a criminal case.
- Possibilities of appeal: 2<sup>nd</sup>, with possibility of a 3<sup>rd</sup> instants approval.
- Burden of proof: According to PPD section 69, the liability is culpa with the reversed burden of proof.
- Available mechanism to lower the burden of proof: only the reversed burden of proof mentioned above.
- Requirement of legal representation: An application can be filed by the injured party without legal representation, however such representation will be highly recommended at the courts.
- Is there free legal advice/representation available from a public body? Free legal aid can be obtained from a range of voluntary services such as the Danish Victim Support (VID) (*Offerrådgivningen*, OID) or legal aids.<sup>60</sup>
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure? No
- Cost of procedure: See Redress Mechanism Number 4, describing the same type of civil proceedings.

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<sup>57</sup> Yearly report from the Danish courts, 2011, (*Danmarks Domstoles årsrapport 2011*) available in Danish at:

[www.domstol.dk/om/publikationer/HtmlPublikationer/Aarsrapporter/Aarsrapport%202011/kap02.htm](http://www.domstol.dk/om/publikationer/HtmlPublikationer/Aarsrapporter/Aarsrapport%202011/kap02.htm) (22 May 2012).

<sup>58</sup> See: the case U.2004.2204Ø.

<sup>59</sup> According to PPD Chapter 18 on Liability in damages and criminal liability, section 69, the controller shall compensate any damage caused by the processing of data in violation of the provisions of PPD unless it is established that such damage could not have been averted through the diligence and care required in connection with the processing of data. Section 69 in PPD does only cover economical damages. In the literature it has been pointed out that the right to compensation according to PPD section 69 does not include compensation for the loss of integrity as a result of a breach of security – the compensation only covers economic damages. According to literature and DPA there are a significant number of breaches of the security regulation and requirements in the PPD. According to PPD section 69, a claim of compensation shall be brought before a court of law and not the supervising authority.

<sup>60</sup> [www.offerraadgivning.dk/](http://www.offerraadgivning.dk/) and the legal aids: Advokatvagten (*The Lawyers watch*), Københavns Retshjælp (*The Legal Aid of Copenhagen*), Københavnske Advokaters Retshjælp (*The Legal Aid of Lawyers Offices in Copenhagen*), Kritisk Retshjælp (*Critical Legal Aid*), Gellerupparkens Retshjælp (*The Legal Aid of Gellerupparken*), Studenterrådets Retshjælp (*The Legal Aid of the Students Council*), Retshjælpen i Vestergade – Odense (*The Legal Aid in Vestergade – Odense*), Århus Retshjælp (*The Legal Aid in Århus*), De Jurastuderendes Retshjælp (*The Legal Aid of the Law Students*), Nettets Gratis Retshjælp (NGR) (*The Free Legal Aid on the Net*).

- Average duration of procedure: See Redress Mechanism Number 4, describing the same type of civil proceedings.
- Outcomes: No published cases have awarded damages in in connection to data protection.<sup>61</sup> In 2009, 2010 and 2011, the only published case on the issue has been U.2011.2343H where the plaintiff's claim of damages was dismissed.<sup>62</sup>

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<sup>61</sup> See: <http://jura.karnovgroup.dk/toc/433-1-2004/r/3/3/161656> (31.05.2012).

<sup>62</sup> See: <http://jura.karnovgroup.dk/document/7000497660/1?versid=37-1-1998> (31.05.2012).