

FRANCE

FRANET Contractor

Ad Hoc Information Report

Data protection: Redress mechanisms and their use

2012

Institut Français des Droits et Libertés (IFDL)

Lois Rachel, Soraya Amrani-Mekki



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

SUMMARY

- Introduction3**
- I. Legal action based on civil law.....3**
 - A. Substantive Actions.....3
 - B. Summary proceedings.....4
 - C. Legal action based on employment law.....4
- II. Legal action based on criminal law.....5**
 - A. Offences in the Criminal Code.....5
 - B. Offences codified outside the Criminal Code.....6
- III. Legal action based on administrative law.....6**
 - A. Challenges to the legality of a text or an administrative decision.....6
 - B. The 'petition for civil liberties'.....6
- IV. Complaints before the national Data Protection Authority (CNIL).....7**
- V. Amicable settlement of conflicts.....7**
- Annex 1. Mapping of Redress mechanisms in the area of data protection.....9**
- Annex 2. Detailed information.....12**
- Bibliographie.....36**

Introduction

In European law personal data protection is based on Article 8-1 of the European Convention on Human Rights, which states that: '*Everyone has the right to respect for her or his private and family life, of her or his home and her or his correspondence*'. In EU law, Article 8 of the Charter of Fundamental Rights of the European Union stipulates that: '*1. Everyone is entitled to the protection of personal data concerning her or him. 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. 3. Compliance with these rules shall be subject to control by an independent authority*'.

In France, a person who considers that the protection of personal data has not been respected may seek redress in several ways. Firstly, they may take action based on *civil law*, specifically Article 1382 of the of Civil Code and Article 9 of the Civil Code, which establishes the right '*to respect for private life*' (section I, below), or, in cases concerned with employment law, Article L. 1222-4 of the Labour Code. They may then base their action on criminal law which provides for various offences (section II, below). It is also possible for some cases to be taken to the administrative courts (section III, below), and the independent data protection authority, the CNIL (*Commission Nationale de l'Informatique et des Libertés*) (section IV, below), which has extensive powers. Finally, nothing prevents a victim from seeking an amicable solution (section V, below). Actions which may be instigated appear in a variety of texts, which limits the possibility of being exhaustive. It would be desirable to encourage grouping these actions when possible (*for example, in criminal matters*).

I. Legal action based on civil law:

A. Substantive Actions:

- *Article 1382 of the Civil Code:*

Article 1382 states that '*Any human act that causes damage to another obliges the person causing the damage to provide reparation*'. Historically, the courts first used this provision to punish breaches of privacy¹. Although there is now a specific text (Article 9 of the Civil Code), it is still possible for a victim to use the common law of civil liability when they are able to demonstrate the linkages of misconduct, injury and causality. In such cases, the victim may not only seek damages to compensate for the damage suffered, but may also obtain moral restitution by the imposition of measures to stop the unlawful acts².

- *Article 9 of the Civil Code:*

Article 9 was created by Law No. 70-643 of 17 July 1970: '*Everyone has the right to respect for his or her private life. Without prejudice to compensation for injury suffered, the court*

¹ Saint-Pau, J.-C. (2010).

² Viney, G. and Jourdain, P. (2011).

may prescribe any measures, such as sequestration, seizure, and others as deemed appropriate, to prevent or put an end to an invasion of personal privacy'. In order to take legal action in the field of protection of personal data it is therefore necessary that the use or collection of personal data constitute an infringement of the right to respect for privacy.

This provision is not a simple application of the law of civil liability. The Court of Cassation in fact clearly distinguishes between legal action based on Article 9 and that based on Article 1382. It is not necessary that the victim establish proof of damage, or even an offence that would differ from that of the invasion of privacy, *'the mere incidence of an invasion of privacy invokes the right to compensation'*³. The conditions for legal action are therefore particularly favourable. The victim will be able to more easily obtain damages and measures to stop the illegal behaviour.

B. Summary proceedings

– *Articles 808, 809, 848 and 849 of the Code of Civil Procedure:*

Before acting on the basis of Article 1382 of the Civil Code, the victim may also use a summary procedure. Such cases are based on Article 808 (*'In all cases of urgency, the president of the High Court may order in a summary procedure all measures that do not encounter any serious challenge or which the existence of the dispute justifies'*), or section 809 of the Code of Civil Procedure (*'The president may always, even where confronted with a serious challenge, order in a summary procedure such protective measures or measures to restore [the parties] to [their] previous state as required, either to avoid imminent damage or to abate a manifestly illegal nuisance. In cases where the existence of the obligation is not seriously challenged, the president may award an interim payment to the creditor or order the obligatory performance of the obligation even where this is an obligation to perform a particular action.'*). These same measures are available to magistrate's courts (Articles 848 and 849 CCP).

– *Article 9 of the Civil Code*

Article 9 states that *'in case of emergency those measures may be provided for by interim order'*.

C. Legal action based on employment law

In employment law - at labour tribunals, courts of appeal and, ultimately, at the employment division of the Court of Cassation, as a last resort - legislation on the protection of personal data and the related liabilities for the employer is frequently cited. However, in this context, violation of personal data privacy is generally not part of the main proceedings of the case. Rather, it is often a question of establishing the illegality of incriminating evidence obtained by the employer through the processing of personal data that does not conform to the law (failure to make a declaration to the CNIL, failure to inform employees etc.), in order to challenge disciplinary action or dismissal of an employee.

³ France, Court of Cassation, First Civil Division (1996)

The CNIL thus notes that *'since 2004, the Employment Division of the Court of Cassation has held that the failure to make a declaration to the CNIL of a control system for passes for the entry and exit of personnel results in the precluding of an employer from penalizing an employee who refuses to use such a system. Similarly, the Court of Cassation has consistently held that on other systems such as CCTV, the employer may not install a device to monitor professional activity without informing the employees beforehand'*⁴.

In such litigation, damages may be obtained in line with Article L.1222-4 of the Labour Code, which provides that *'no personal information about an employee may be collected by a device that has not previously been brought to the employee's attention'*, and the provisions of Law 78-17 of 6 January 1978, specifically Article 22, which provides for the declaration of any automatic processing of personal data to the CNIL⁵.

II Legal action based on criminal law:

A. Offences in the Criminal Code

There are many criminal offences aimed at reducing breaches of personal data protection⁶. The law relating to data protection and civil liberties No. 78-17 of 6 January 1978 provides in Article 50 that *'Violations of the provisions of this Law are defined and punishable under Articles 226-16 to 226-24 of the Criminal Code'*. These offences are now grouped in a section of the Code entitled *'Breaches of personal rights resulting from data files or data processing'*. The list of offences is provided in the appendix. In addition, Decree No. 2005-1309 of 22 October 2005 provides for several offences in Articles R. 625-10, R. 625-11 and R. 625-12 of the Criminal Code. Further to this particular section, there is also a section entitled *'Breaches of privacy'* in sections 226-1 et seq. of the Criminal Code. Thus, Article 226-4-1, established by the law of 14 March 2011, states that *'impersonating a third party or making use of data of any kind to identify a person in order to disturb their tranquillity or that of others, or damage their honour or consideration, is punishable by one year's imprisonment and a fine of €15,000. This offence is punishable by the same penalties when committed on a public communication network online'*.

B. Offences codified outside the Criminal Code:

Outside of the Criminal Code, Law No. 78-17 of 6 January 1978 itself details an offence in section 51: *'A penalty of one year's imprisonment and a fine of €15,000 for obstructing the*

⁴ www.cnil.fr/la-cnil/actualite/article/article/geolocalisation-des-vehicules-la-justice-condamne-un-employeur-qui-na-pas-suivi-les-regles-i/.

⁵ For a recent example, see the Court of Appeal of Dijon, *Mille Services vs. Rémi X*, Social Division, 14 September 2010. This decision has confirmed a judgment of the Labour Tribunal, finding no real and serious grounds for the dismissal of an employee. In this case, the company was ordered to pay €1000 to the employee for unfair execution of the employment contract to the extent that the legal rules relating to the installation of a geolocation system had not been met. The decision is also based on Article 6 of Standard No. 51 of the National Commission on Data Protection and Civil Liberties which states that the employer has the obligation to inform each individual employee concerned as soon as it is considering installing a geolocation device.

⁶ Maistre du Chambon, P., Lepage *et al* (2010) ; Frayssinet, J. (2006).

action of the national Data Protection Commission [CNIL]: 1) by opposing the exercise of the tasks entrusted to its members or authorised officers pursuant to the last paragraph of Article 19 when a visit [of premises] was authorised by a judge; 2) by refusing to disclose to its members or authorised officers pursuant to the last paragraph of Article 19 information and documents relevant to their mission, or concealing such documents or information, or rendering them inaccessible; 3) by providing information that does not conform to the contents of the records as they were when the request was made or not presenting the contents in a readily accessible form'. In addition, certain offences are contained in other codes: the Postal and Electronic Communications Code (Article R. 10-1), the Code of Criminal Procedure (Article 777-3), the Code of Public Health (Article L. 1115-1), the Code of Social Action and Families (L. 121-6-1) or the Monetary and Financial Code (Article L. 163-11 and L. 163-12). Similarly, Law No. 95-73 of 21 January 1995 criminalises 'the act of installing a CCTV system or maintaining it without authorization to make unauthorised recordings of CCTV, not destroying [authorised] recordings within the time specified, falsifying images, hindering the work of the departmental committee or the national Commission for Data Protection, or allowing unauthorised persons access to the images or using images for purposes other than those for which they are authorised' (Article 10, VI).

III. Legal action based on administrative law:

A. Challenges to the legality of a text or an administrative decision:

In the event that a text disregards the provisions of Law No. 78-17 of 6 January 1978, it is still possible to challenge its legality before the Council of State. Thus, the Council of State recently ruled that the 'Primary School' and 'National ID' pupil databases were unlawful⁷. The same applies to the decree of 26 December 2007 establishing the 'ELOI' database which was partially annulled⁸. Moreover, it is possible to obtain the suspension of a Prefect's decision which has used the data in a computerised data file in violation of the Law of 18 March 2003⁹.

B. The 'petition for civil liberties':

If the administration breaches privacy and disregards the legislation applicable to personal data, it is first necessary to make a prior request for rectification which, if rejected, will bring about legal action. However, there is a faster procedure. According to Article L. 521-2 of the Code of Administrative Justice, '*On an application in this sense justified by its urgency, the judge for urgent applications may order any action necessary to protect a fundamental freedom from a serious and manifestly illegal violation of privacy that a legal entity or a body responsible for managing a public service may have committed in the exercise of its powers. The judge will make a decision within forty-eight hours*'. This procedure, called a 'petition for civil liberties'¹⁰ (*référé-liberté*), presupposes both an urgent situation and a serious and manifestly illegal violation of privacy and provides a temporary measure to bring an end to

⁷ France, State Council (2010).

⁸ France, State Council (2009).

⁹ France, State Council (2005).

¹⁰ Chapus, R. (2008)

the offence. Insofar as the right to respect for privacy is a fundamental freedom¹¹, violation of personal data privacy could justify using this injunction procedure.

IV. Complaints before the national Data Protection Authority (CNIL):

The CNIL is an independent administrative authority (IAA). Its tasks are laid down in Article 11 of the Law of 6 January 1978. Without detailing all of these¹², it must, notably, ensure '*that the processing of personal data is implemented in accordance with the provisions of this law*'. As such, it '*receives complaints, petitions and complaints concerning the implementation of processing of personal data and informs the perpetrators of the outcome of these*'. In this case, it assesses the appropriate action to be taken¹³. It also responds to '*access requests concerning the data processing mentioned in Articles 41 and 42*', that is to say, those concerned with State security, defence or public safety, or those implemented by governments and individuals entrusted with a public service function whose role it is to prevent, detect or investigate offences, or to control or collect taxes.

The sanctioning powers of the CNIL contained in Articles 45 and onwards of the law are:

- Under Article 45, the sub-committee of the Commission may first decide to issue '*a warning to those responsible for data processing that does not meet the obligations stipulated in this law*'. The Chair of the Committee may also order those responsible to stop the activity concerned by the shortcoming. If those responsible for the processing fail to comply with the notice, the sub-committee may impose a financial penalty or an injunction to stop the processing, when this comes under the provisions of Article 22, or withdraw the authorization granted under Article 25.

- In urgent cases, the sub-committee may, under certain conditions, interrupt the data processing, issue a warning, lock some of the personal data processed, and inform the Prime Minister in order that the appropriate measures be taken to end the violation.

- Finally, in cases of a serious and immediate threat to rights and freedoms, the Chair of the committee may request, by way of interim order, that the relevant Court order any security measures necessary to safeguard these rights and freedoms.

V. Amicable settlement of conflicts:

The victim may finally opt for an 'amicable' settlement through *conciliation, mediation* or *compromise*¹⁴ - although it is unlikely in practice that this amicable route is used. There is also the new *participatory procedure agreement*, defined as '*an agreement by which the parties to a dispute which has not yet resulted in referral to a judge or arbitrator will pledge to work jointly and in good faith to resolve their dispute amicably*' (Article 2062 et seq of the Civil Code). In certain conditions, the use of *arbitration* may also be considered (Article 1442 et seq of the Code of Civil Procedure).

¹¹ Giltard, D. (2011)

¹² Marcellin, S., Vivant M. et al (2011) ; Bensoussan, A. (2010)

¹³ France, Court of Cassation, Criminal Division (1998)

¹⁴ Cadiet, L. and Jeuland, E. (2011)

Conclusion: To conclude, it should also be noted that there exists the possibility established by the constitutional reform of 2008 of addressing the Constitutional Council with a '*priority issue of constitutionality*' (*question prioritaire de constitutionnalité, QPC*). A 'QPC' on the national computerised DNA database has led to a recent decision¹⁵.

¹⁵ France, Constitutional Council (2010).

Mapping of Redress mechanisms in the area of data protection

Country: FRANCE

Redress Mechanism Number	Type of possible outcomes of procedure	First instance	Total Number of times this procedure was initiated in 2009	Total Number of times this procedure was initiated in 2010	Total Number of times this procedure was initiated in 2011
1	Compensation in the form of damages or moral restitution (<i>Article 1382 CC</i>)	District Court or High Court (<i>depending on the size of the claim</i>)	No targeted statistics available ¹⁶ Requests for compensation and or termination of a breach of the right to or respect of privacy: 625 at the High Courts (<i>Tribunaux de grande instance</i>) (except for the Commercial Chamber) ; 166 at the Courts (<i>Tribunaux d'instance</i>) and at the Farm Tenancy Courts (<i>Tribunaux paritaires des baux ruraux</i>) ¹⁷	No targeted statistics available ¹⁸ Requests for compensation and or termination of a breach of the right to or respect of privacy: 624 at the High Courts (<i>Tribunaux de grande instance</i>); 98 at the Courts (<i>Tribunaux d'instance</i>) and at the Farm Tenancy Courts (<i>Tribunaux paritaires des baux ruraux</i>) ¹⁹	No statistics available for 2011 ²⁰

¹⁶ www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

¹⁷ www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

¹⁸ www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

¹⁹ www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

²⁰ www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

2	Compensation in the form of damages or moral restitution (<i>art. 9 CC</i>)	District Court or High Court (<i>depending on the amount of the claim</i>)	No targeted statistics available ²¹	No targeted statistics available ²²	No targeted statistics available ²³
3	Interim measures (<i>articles 808 and 809 CCP, articles 848 and 849 CCP before the district court</i>)	Judge for urgent applications (TGI)	No targeted statistics available ²⁴	No targeted statistics available ²⁵	No targeted statistics available ²⁶
4	Interim measures (<i>Article 9 CC</i>)	Judge for urgent applications (TGI)	No targeted statistics available ²⁷	No targeted statistics available ²⁸	No targeted statistics available ²⁹
5	Damages (Article L. 1222-4 of the Labour Code; Article	Labour Tribunal	No targeted statistics available ³⁰	No targeted statistics available ³¹	No targeted statistics

²¹ www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

²² www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

²³ www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

²⁴ www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

²⁵ www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

²⁶ www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

²⁷ www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

²⁸ www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

²⁹ www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

³⁰ www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

	22 of Law 78-17 of 6 January 1978)				available ³²
6	Fines and imprisonment (<i>offences established in articles 226-16 to 226-24 of the Criminal Code, Article 226-4-1 of the Criminal Code, Article 51 of Law No. 78-17 of 6 January 1978, Article 777-3 CCP, Article L. 1115-1 of the CSP; Article L. 121-6-1 of the Code of Social Action and Families; Article L. 163-11 and L. 163-12 of the Monetary and Financial Code; Article 10, VI of Law No. 95-73 of 21 January 1995</i>)	Criminal Court	27 convictions as a “main penalty”(à titre principal) and 21 as “single penalty “ (à titre unique) 35 offences resulted in convictions (34 offences, 1 minor violation) No statistics available regarding the number of complaints ³³	24 convictions as a “main penalty”(à titre principal) and 15 as “single penalty “ (à titre unique) 47offences resulted in convictions No statistics available regarding the number of complaints ³⁴	No statistics available ³⁵
7	Fines (<i>Offences under Articles R. 625-10 and following of the Criminal Code; R. 10-1 of the Postal and Electronic Communications Code</i>)	Police court (and local court until 31 December 2013)	9 judgments and 2 criminal orders ³⁶	9 judgments and 1 criminal order ³⁷	3 judgments and 1 criminal order ³⁸
	Cancellation of an		No statistics available ³⁹	No statistics available ⁴⁰	No statistics available ⁴¹

³¹ www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

³² www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

³³ Center of criminal justice policy evaluation – DACG (2012)

³⁴ Center of criminal justice policy evaluation – DACG (2012)

³⁵ Center of criminal justice policy evaluation – DACG (2012)

³⁶ Center of criminal justice policy evaluation – DACG (2012)

³⁷ Center of criminal justice policy evaluation – DACG (2012)

³⁸ Center of criminal justice policy evaluation – DACG (2012)

³⁹ www.conseil-etat.fr/fr/le-conseil-d-etat-et-la-justice-administrative-en/.

⁴⁰ www.conseil-etat.fr/fr/le-conseil-d-etat-et-la-justice-administrative-en/.

8	administrative act (L311-1 CJA)	Administrative Court			
9	Cancellation of an order or a statutory regulation, a circular or general order from a minister or an authority with national jurisdiction. (R311-1 CJA)	State Council	No statistics available ⁴²	No statistics available ⁴³	No statistics available ⁴⁴
10	Summary measures (L. 521-2 CJA)	Judge for urgent applications (Administrative Court or Council of State)	No statistics available ⁴⁵	No statistics available ⁴⁶	No statistics available ⁴⁷
11	Warning, notice, penalty or injunction to stop the treatment or withdrawal of authorization (Article 45, I); Interruption of the data processing, warning, locking of data, informing the Prime Minister (Article 45, II);	CNIL (Data Protection Authority)	4265 complaints 82 enforcement notices 4 warnings 1 injunction 5 financial sanctions ⁴⁸	4821 complaints 107 enforcement notices 3 warnings 3 injunctions 4 financial sanctions ⁴⁹	5738 complaints 65 enforcement notices 13 warnings 1 injunction 5 financial sanctions ⁵⁰

⁴¹ www.conseil-etat.fr/fr/le-conseil-d-etat-et-la-justice-administrative-en/.

⁴² www.conseil-etat.fr/fr/le-conseil-d-etat-et-la-justice-administrative-en/.

⁴³ www.conseil-etat.fr/fr/le-conseil-d-etat-et-la-justice-administrative-en/.

⁴⁴ www.conseil-etat.fr/fr/le-conseil-d-etat-et-la-justice-administrative-en/.

⁴⁵ www.conseil-etat.fr/fr/le-conseil-d-etat-et-la-justice-administrative-en/.

⁴⁶ www.conseil-etat.fr/fr/le-conseil-d-etat-et-la-justice-administrative-en/.

⁴⁷ www.conseil-etat.fr/fr/le-conseil-d-etat-et-la-justice-administrative-en/.

⁴⁸ www.cnil.fr/.

⁴⁹ www.cnil.fr/.

⁵⁰ www.cnil.fr/.

12	Measures provided for by the parties in their agreement	Amicable settlement	No statistics available ⁵¹	No statistics available ⁵²	No statistics available ⁵³
----	---	---------------------	---------------------------------------	---------------------------------------	---------------------------------------

⁵¹ www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

⁵² www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

⁵³ www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.

Detailed information

Number 1: Compensation in the form of damages or moral restitution

Civil Procedure

Legal basis: Article 1382 of the Civil Code: '*Any human act that causes damage to another obliges the person causing the damage to provide reparation*'

Appeal procedures: Appeals are possible for all claims exceeding €4,000. It is always possible to challenge a ruling on an appeal (within 2 months).

Burden of proof: The plaintiff must prove that the grounds exist (an offence, damage and causality) for an application on the rule of law invoked (Article 9 CCP and CC 1315).

Legal Representation: Before the high court, legal representation is obligatory. The same is true before the Court of Appeal and the Court of Cassation (*which implies high costs*). However, the parties may appear in person before the court.

Legal aid: Provided for by Law No. 91-647 of 10 July 1991, legal aid is intended to assist individuals whose resources are insufficient to assert their rights in court. In 2011, for full legal aid, monthly income must be less than €929; for partial assistance, the ceiling was set at €1393. Applications for legal aid are made through the Legal Aid Office located in each District Court. Article 5 of the law states that resources of every kind which the applicant enjoys or has direct or indirect access to are considered. Account is taken of external elements of lifestyle. Excluded from the assessment are resources from family benefits and certain specialized social benefits in accordance with the provisions prescribed by Order in Council of State.

Legal assistance: There are houses of justice and law which, since 1998, '*provide a local judicial presence and contribute to crime prevention, victim support and access to law. Alternative criminal proceedings measures and measures for the amicable resolution of disputes are available*' (Article R. 131-1 COJ).

Representation by associations: There are several means by which this occurs.

Firstly, the association may represent its members.

One may be represented by an association using the technique of the mandate. In this case, the rule *Nul ne plaide par procureur* (one may not plead by proxy) requires that the name of the person represented appear in all acts of the procedure. In consumer law, there is a particular course of legal action, that of joint representation, also based on the mandate, which is regulated by Articles L. 422-1 et seq. of the Consumer Code: '*Where several consumers, identified as natural persons, have suffered individual damages caused by the same business act and which have a common origin, any approved association recognised as being representative on a national level in application of the provisions of part I may, if it has been*

*duly authorised by at least two of the consumers concerned, institute legal proceedings to obtain reparation before any court on behalf of these consumers. The mandate may not be solicited by means of a public appeal on radio or television, nor by means of posting of information, by tract or personalised letter. Authorisation must be given in writing by each consumer'. However, there are not to date any real provisions for class action in French law. Moreover, an association may act on behalf of a 'collective interest' if it has received clearance from the legislature. However, in recent years, the Court of Cassation seems to accept the work of associations without authorization, when the interests of those on whose behalf it acts come within its core activities (e.g.: France, Court of Cassation, Third Civil Division (*Cour de cassation, 3 Chambre civile*), No. 04-20636, 26 September 2007). Thus, an association whose core activity is the protection of personal data could directly take legal action.*

Costs associated with the procedure: There exists the principle of free access to justice. However, since decree No. 2011-1202 of 28 September 2011, for a case to be accepted, a tax of €35 is demanded: *'a contribution to legal aid of €35 is collected for each civil, commercial, industrial tribunal, social and rural proceeding brought before a court or an administrative court'* (art. 1635 bis Q, I). It is payable by the party initiating a proceeding. However, it is not paid, notably, by those who benefit from legal aid. Additionally, on appeal, *'an amount of €150 is owed by the parties to the appeal court where the appointment of counsel is obligatory before the appellate court. The sum is paid by the lawyer on behalf of the client in fiscal stamps or electronically. It is not payable by parties receiving legal aid'*. Finally, the losing party will normally bear the expenses and other costs, such as legal fees (Article 700 CCP).

Average length of procedure: Statistics are not available. According to Article 764 of the Code of Civil Procedure, *'the pre-trial judge may fix, as necessary, the time required for the investigation of the case, given its nature, urgency and complexity, and after consulting with the lawyers. The judge may grant time extensions. The judge may, after obtaining the agreement of counsel, set a timetable for pre-trial. The timetable contains the expected number and the date of exchange of submissions, the date of closing, of the debates and, notwithstanding the first and second paragraphs of Article 450, the date of the decision. The deadlines in the timetable of the pre-trial may only be extended in exceptional and fully justified circumstances. The judge may also refer the matter to a later judicial conference to facilitate settlement of the dispute'*. The length of proceedings is highly variable. It should at least respect the 'reasonable time' principle, as per Article 6.1 of the ECHR. This principle is set out in Article L. 111-3 COJ: *'Judicial decisions are made within a reasonable time'*. If the delay is excessive, it is possible to engage the responsibility of the State on the basis of Article L. COJ 141-1: *'The State shall make good the damage caused by the improper administration of justice. Unless otherwise provided, this responsibility is only engaged by gross negligence or a denial of justice'*. The reasonable time requirement also applies in administrative matters⁵⁴.

⁵⁴ For example, France, State Council (2006a), State Council (2006b). The State Council has clarified that 'the reasonableness of the time of trial of a case must be assessed in a manner that is both comprehensive - taking account, inter alia, the appeal procedures - and meaningful, in taking into account its complexity, the conditions of conduct of the proceedings and, in particular, the parties' conduct throughout, but also, to the extent that the court is aware of evidence, the interests that there may be, for either party, given their particular circumstances,

Number 2: Compensation in the form of damages or moral restitution

Civil Procedure

Legal basis: Article 9 of the Civil Code: *'Everyone has the right to respect for their private life. Without prejudice to compensation for injury suffered, the court may prescribe any measures, such as sequestration, seizure and others as appropriate to prevent or put an end to an invasion of personal privacy; in case of emergency those measures may be provided for by interim order'*.

Appeal procedures: Appeals are possible for all claims exceeding €4,000. It is always possible to challenge a ruling on an appeal (within 2 months).

Burden of proof: The plaintiff must prove that the grounds exist (an offence, damage and causality) for an application on the rule of law invoked (Article 9 CCP and CC 1315). However, *it is sufficient that the victim establish the invasion of privacy*. In effect, according to the Court of Cassation, *'the mere finding of an invasion of privacy opens the way to reparation'*⁵⁵.

Legal representation: see above.

Legal aid: see above.

Legal assistance: see above.

Representation by associations: see above.

Costs associated with the procedure: see above.

Average length of procedure: see above.

Number 3: Interim Measures

Civil Procedure

Legal basis: Article 808 of the Code of Civil Procedure: *'In all cases of urgency, the president of the High Court may order in a summary procedure all measures that do not encounter any serious challenge or which the existence of the dispute justifies'*; Article 809 of the Code of Civil Procedure: *'The president may always, even where confronted with a serious challenge, order in a summary procedure such protective measures or measures to restore (the parties) to (their) previous state as required, either to avoid imminent damage or to abate a manifestly illegal nuisance. In cases where the existence of the obligation is not seriously challenged, the court president may award an interim payment or order the mandatory performance of the obligation even where it is an obligation to perform a particular action'*.

Note of precision: Before the district court articles 848 and 849 CCP must be applied.

Appeal procedures: Appeals are possible. According to Article 490 CCP:

the circumstances of the dispute and, where applicable, by its very nature, the case must be dealt with quickly'. (France, State Council (2002).

⁵⁵ France, Court of Cassation, First Civil Division (1996).

'The summary procedure order may be subject to an appeal save where it emanates from the first president of the court of appeal or it has been pronounced as of final instance by virtue of the value of the claim or the subject matter of the action. The order given as of final instance may, by default, be subject to opposition. The time-limit for appeal or opposition is fifteen days'.

Appeal to a higher court is always possible.

Burden of proof: The plaintiff must prove that the grounds exist (an offence, damage and causality) for an application on the rule of law invoked (Article 9 CCP and CC 1315). The implementation of Article 808 CCP involves establishing the urgency of the case, the absence of a serious challenge and that a dispute exists; with regard to Article 809 paragraph 1 CCP imminent harm or a manifestly unlawful nuisance must be established; with regard to Article 809 paragraph 2 CCP, the plaintiff must prove that the obligation is not seriously open to challenge. The interim payment provides an amount that may represent the totality of the principal sum claimed.

Legal Representation: Legal representation is not obligatory.

Representation by associations: see above.

Legal aid: Provided for by Law No. 91-647 of 10 July 1991, legal aid is intended to assist individuals whose resources are insufficient to assert their rights in court. In 2011, for full legal aid, monthly income must be less than €929; for partial assistance, the ceiling was set at €1393. Applications for legal aid are made through the Legal Aid Office located in each District Court.

Legal assistance: There are houses of justice and law which, since 1998, *'provide a local judicial presence and contribute to crime prevention, victim support and access to law. Alternative criminal proceedings measures and measures for the amicable resolution of disputes are available'* (Article R. 131-1 COJ).

Representation by associations: One may be represented by an association using the technique of the mandate. In this case, the rule *Nul ne plaide par procureur* (one may not plead by proxy) requires that the name of the person represented appear in all acts of the procedure.

Costs associated with the procedure: There exists the principle of free access to justice. However, since decree No. 2011-1202 of 28 September 2011, for a case to be accepted, a tax of €35 is demanded: *'a contribution to legal aid of €35 is collected for each civil, commercial, industrial tribunal, social and rural proceeding brought before a court or an administrative court'* (Article 1635 I Q, I). It is payable by the party initiating a proceeding. However, it is not paid, notably, by those who benefit from legal aid. Finally, the losing party will normally bear the costs and other expenses, such as legal fees (Article 700 CCP).

Average length of procedure: This is a *rapid procedure* without an investigation of the case. Ad-hoc hearings are possible.

Number 4: Interim measures

Civil Procedure

Legal basis: Article 9 of the Civil Code: *'Everyone has the right to respect for their private life. Without prejudice to compensation for injury suffered, the court may prescribe any measures, such as sequestration, seizure and others as appropriate to prevent or put an end to an invasion of personal privacy; in case of emergency those measures may be provided for by interim order'*

Appeal procedures: Appeals are possible. According to Article 490 CCP: *'The summary procedure order may be subject to an appeal save where it emanates from the first president of the court of appeal or it has been pronounced as of final instance by virtue of the value of the claim or the subject matter of the action. The order given as of final instance may, by default, be subject to opposition. The time-limit for appeal or opposition is fifteen days'*. Appeal to a higher court is always possible.

Burden of proof: The plaintiff must prove that the grounds exist (an offence, damage and causality) for an application on the rule of law invoked (Article 9 CCP and CC 1315). The urgency of the case and the existence of a breach of privacy must be established.

Legal representation: see above.

Representation by associations: see above.

Legal aid: see above.

Legal assistance: see above.

Representation by associations: see above.

Costs associated with the procedure: see above.

Average length of procedure: see above.

Number 5: Damages

Procedure in employment law through Labour Tribunals⁵⁶

Legal basis: With regard to the competent authority: Article L. 1411-1 of the Labour Code states that *'the Labour Tribunal resolves through conciliation disputes that may arise in connection with any contract of employment subject to the provisions of this Code between employers or their representatives, and the employees they employ. The Tribunal considers disputes when [other] conciliation has been unsuccessful'*. Regarding the legal basis for action: Article L. 1222-4 of the Labour Code states that *'No information regarding an employee personally may be collected by a device that has not previously been brought to their attention'*. Law 78-17 of 6 January 1978 and in particular Article 22 may also be cited.

Appeal procedures: According to Article L.1462-1 of the Labour Code, labour tribunal rulings

⁵⁶ Norms applicable in the private sector, for the public sector refer to the administrative procedure.

may be appealed (Court of Appeal). Appeal to a higher court is therefore also possible. However, the labour tribunal hears claims for an amount that is set by decree. Thus, for cases filed since 20 September 2005, the size limit of claims that may be heard by labour tribunals is set at €4000 (Decree No. 2005-1190).

Burden of proof: In the absence of specific provisions on the issue of evidence in the Labour Code, the principles embodied in the Civil Code and the Code of Civil Procedure shall apply. The plaintiff must prove that the grounds exist (an offence, damage and causality) for an application on the rule of law invoked (Article 9 CCP and CC 1315).

Legal Representation: In the course of litigation before the Labour Tribunal, it is possible to be represented by a Trade Union lawyer, a lawyer specialised in employment law, or by employees or a spouse/civil partner, but this representation is not obligatory. As part of an appeal, representation by counsel at the Court of Cassation is obligatory.

Representation by associations: The labour tribunals have jurisdiction over individual disputes arising in connection with an employment contract under private law. The Trade Union advocate who may assist and advise the applicant before the Labour Tribunal at all stages of the proceedings is a person designated by a Trade Union on a permanent or temporary basis.

Legal aid: see above

Legal assistance: see above

Costs associated with the procedure: see above

Average length of procedure: The length of proceedings in labour matters is variable depending on the tribunal. According to the Statistical Yearbook 2009-2010, Ministry of Justice edition, the average length of proceedings for closed cases was 13 months (at the Labour Tribunal). Note that there is an emergency procedure, the Interim Labour Tribunal. If urgency is established, the court may order any measures that will not encounter any serious challenge or prescribe preventive measures or rehabilitation that are necessary to prevent imminent damage or to stop a manifestly unlawful act (average duration of proceedings for interim procedures in 2008: 1.7 months).

Number 6: Fines and imprisonment

Criminal Procedure

Legal basis: Article 226-16 of the Criminal Code: '*Processing data or causing data to be processed where the data concerned is of a personal nature, without respecting the formalities required by statute prior to the processing of such data, is punished by five years' imprisonment and a fine of €300,000, even where committed through negligence. The same penalties apply to processing of data or causing data to be processed that has been subject to one of the measures provided for in paragraph 2 of Article 45 I of Law no. 78-17 of 6 January 1978 regulating data protection and civil liberties, even where this is committed through negligence*';

Article 226-16-1-A of the Criminal Code: *'Where data is processed or caused to be processed in the situations mentioned in paragraphs I or II of Article 24 of the above-mentioned Law No. 78-17 of 6 January 1978, and the simplified or exempted norms prescribed for these purposes by the National Commission for Data Protection and Civil Liberties are not respected, even through negligence, this is punished by five years' imprisonment and by a fine of €30,000'.*

Article 226-16-1 of the Criminal Code: *'Except where this has been authorised under the conditions set out by the aforementioned Law No.78-17 of 6 January 1978, processing or causing data to be processed which is personal and which indicates a person or persons' registration number in the National Register of Natural Persons is punished by five years' imprisonment and by a fine of €300,000'.*

Article 226-17 of the Criminal Code: *'Carrying out or causing to be carried out the processing of personal data without putting into practice the measures required by Article 34 of the aforementioned Law No. 78-17 of 6 January 1978 is punished by five years' imprisonment and a fine of €300,000'.*

Article 226-17-1 of the Criminal Code: *'Failure by a provider of electronic communications services to notify the National Commission on Data Protection and Civil Liberties, or the affected party, of a violation of personal data, in disregard of the provisions of II of Article 34a of Law No. 78-17 of 6 January 1978, is punishable by five years' imprisonment and a fine of € 300,000'.*

Article 226-18 of the Criminal Code: *'The collection of personal data by fraudulent, unfair or unlawful means is punished by five years' imprisonment and a fine of €300,000'.*

Article 226-18-1 of the Criminal Code: *'Carrying out or causing to be carried out the processing of personal data relating to a natural person despite this person's objection, when the processing is done for the purpose of prospecting, particularly commercial prospecting, or when the objection is founded on legitimate reasons, is punished by five years' imprisonment and a fine of €300,000'.*

Article 226-19 of the Criminal Code: *'Except in cases provided for by law, the recording or preserving without the express agreement of the persons concerned, of computerised personal data which directly or indirectly reveals their racial origins, political, philosophical or religious opinions, or trade union affiliations, or their health or sexual orientation, is punished by five years' imprisonment and a fine of €300,000. The same penalty applies to the recording or preserving in a computerised memory of name-bearing information relating to offences, convictions or supervision measures outside the cases provided for by law'.*

Article 226-19-1 of the Criminal Code: *'Where the processing of personal data takes place the aim of which is research in the area of health, a penalty of five years' imprisonment and a fine of €300,000 applies to any processing carried out: 1) without having previously individually informed the persons on whose account the personal data have been collected or transmitted*

of their right to request access, rectification and objection, and of the nature of the data to be transmitted and the persons to whom it is to be sent; 2) despite the objection of the person concerned or, where this is required by law, in the absence of the informed and express consent of this person, or where the person is deceased, despite their refusal expressed when alive'.

Article 226-20 of the Criminal Code: 'The retention of personal data beyond the length of time specified by statute or by regulation, by the request for authorisation or notice, or in the preliminary declaration sent to the National Commission for Data Protection and Civil Liberties, is punished by five years' imprisonment and a fine of €300,000, except where the retention was carried out for historical, statistical or scientific purposes in conditions specified by law. Except where the law otherwise provides, the same penalties apply to any processing of data held beyond the periods mentioned in the previous paragraph, where this is done for purposes other than those which are historical, statistical or scientific'.

Article 226-21 of the Criminal Code: 'Anyone holding personal data at the time of its recording, classification, transmission or any other form of processing who diverts this information from its proper purpose, as defined by the legislative provision or regulation or decision of the National Commission for Data Protection and Civil Liberties authorising automated processing, or by the preliminary statement made before the implementation of such processing, is punished by five years' imprisonment and a fine of €300,000'.

Article 226-22 of the Criminal Code: 'Anyone who has collected, at the time of its recording, classification, transmission or any other form of processing, personal data the disclosure of which would result in undermining the reputation of the data subject or cause harm to the intimacy of their private life, and then brings such information to the knowledge of a third party who has no authority to receive it without prior authorisation of the data subject, is punished by three years' imprisonment and a fine of €300,000.

Disclosure contrary to the previous paragraph is punished by a fine of €100,000 where it was committed by carelessness or negligence.

In the cases set out under the two previous paragraphs, legal proceedings may only be initiated upon the complaint of the victim, their legal representative or successors'.

Article 226-22-1 of the Criminal Code: 'Except in cases provided for by law, transferring or causing to be transferred any personal data used or intended for use in data processing to a State not belonging to the European Community in breach of any measures taken by the National Commission for Data Protection and Civil Liberties described in Article 70 of the aforementioned Law no. 78-17 of 6 January 1978 is punished by 5 years' imprisonment and a fine of €300,000'.

Article 226-22-2 of the Criminal Code: 'In the cases provided for by articles 226-16 to 226-22-1, the destruction of the personal data the processing of which has given rise to the offence may be ordered. The members or officials of the National Commission for Data Protection and Civil Liberties are authorised to verify the destruction of such information'.

Article 226-23 of the Criminal Code: *'The provisions of Article 226-19 are applicable to the non-automated processing of personal data, when the processing operation does not take place exclusively in the course of activities that are purely private'.*

Article 226-24 of the Criminal Code: *'Legal persons may incur criminal liability, under the conditions provided by Article 121-2, for the offences set out in the present section. The penalties applicable to legal persons are: 1) a fine, pursuant to the conditions set out under Article 131-38; 2) the penalties enumerated under paragraphs 2, 3, 4, 5, 7, 8 and 9 of Article 131-39.*

The prohibition mentioned under paragraph 2 of Article 131-39 applies to the activity in the exercise of which or on the occasion of the exercise of which the offence was committed'.

Article 226-4-1 of the Criminal Code: *'impersonating a third party or making use of data of any kind to identify a person in order to disturb their tranquillity or that of others, or damage their honour or consideration, is punishable by one year's imprisonment and a fine of €15,000. This offence is punishable by the same penalties when committed on a public communication network online'.*

Article 51 of Law No. 78-17 of 6 January 1978: *'A penalty of one year's imprisonment and a fine of €15,000 for obstructing the action of the national Data Protection Commission: 1) by opposing the exercise of the duties entrusted to its members or authorised officers pursuant to the last paragraph of Article 19 when the visit [of premises] was authorised by a judge; 2) by refusing to disclose to its members or authorised officers pursuant to the last paragraph of Article 19 information and documents relevant to their duties, or concealing such documents or information, or rendering them inaccessible; 3) by providing information that does not conform to the contents of the records as they were when the request was made or not presenting the contents in a readily accessible form'*

Article 777-3 of the Code for Criminal Procedure: *'No interconnection, in the sense of paragraph 3 of Article 30 I of Law no. 78-17 of 6 January 1978 relating to data protection and civil liberties, may be made between the national automated criminal records and any other file or data base or system for processing personal data managed by any person or by a State administration not under the authority of the Ministry of Justice. No computer file or data base of personal information managed by any person or by any State administration not under the authority of the Ministry of Justice may record any sentences, except in those cases pursuant to the conditions set out by law. A criminal conviction may, however, always be invoked before a court by the victim of the offence. Any violation of the preceding provisions will be punished by the penalties incurred for the offence provided for by Article 226-21 of the Criminal Code'.*

Article L. 1115-1 Code of Public Health:

'The hosting of health data collected from personal or professional health care institutions or directly from the data subjects without the authorization provided for in Article L. 1111-8 or processing of these data without respecting the conditions of authorization is punishable by three years imprisonment and a €45,000 fine'.

Article L. 121-6-1 of the Code of Social Action and Families:

'In order to encourage the involvement of health and social services, local councils collect information concerning the identity, age and address of senior citizens and disabled persons who have requested such services. These data are used in particular by the above services to organise regular contact with persons listed when an emergency alert provided for in Article L. 116-3 is implemented. Local councils may also collect such data at the request of a third party on condition that the person concerned, or their legal representative, does not object. Nominative registers created during the collection of information referred to in the preceding paragraph are required to be held in accordance with the provisions of Law No. 78-17 of 6 January 1978 relating to data protection and civil liberties. The right of access and correction of personal data is ensured in accordance with, and provided for by, the same law. These personal data may only be accessed by the agents responsible for the implementation of this collection and that of the emergency alert plan referred to in Article L. 116-3. Dissemination of these data to persons not authorised to access them or misuse of the data are subject to the penalties provided for in Articles 226-16 to 226-24 of the Criminal Code. This information is collected, transmitted and used under conditions ensuring confidentiality and in accordance with procedures established by State Council decree issued after consultation with the National Commission on Data Protection and Civil Liberties'.

Article L. 163-11 of the Monetary and Financial Code:

'The following offences shall incur the penalties imposed by Article 226-21 of the Criminal Code:

- 1. Using the information stored by the Banque de France pursuant to the first paragraph of Article L. 131-85 for purposes other than those intended by Articles L. 131-1 to L. 131-87 relating to cheques and Articles L. 1-1 and L. 132-2 relating to payment cards*
- 2. Storing the information referred to in the first paragraph of Article L. 131-85 in lieu in place of the Banque de France'*

Article L. 163-12 of the Monetary and Financial Code:

'Dissemination or holding of information obtained pursuant to Article L. 131-86 shall incur the penalties imposed by Article 226-21 of the Criminal Code'.

Article 10, VI of Law No. 95-73 of 21 January 1995:

'The acts of installing a video surveillance system or maintaining one without authorization, of making unauthorised recordings or not destroying [authorised] recordings within the time specified, of falsifying images, of hindering the work of the local commission (Commission Départementale) or National Commission on Data Protection and Civil Liberties (CNIL), of giving access to unauthorised persons to images or using these images for purposes other than those for which they are allowed is punishable by three years imprisonment and a €45,000 fine, without prejudice to the provisions of Articles 226-1 of the Criminal Code and L. 120-2, L. 121-8 and L. 432-2-1 of the Labour Code'.

Point of precision: The victim can either instigate or support public legal action as civil party plaintiff. On this occasion, they may also seek redress for their civil claims before a criminal court, which will apply the rules of civil law mentioned above.

NB: The information below concerns the situation of the civil party plaintiff whose procedural rights differ from those of the accused.

Appeal procedures: Article 496 CCP provides that judgments in criminal cases can be challenged by way of appeal. Reference must then be made to Article 497 CCP: *'The right to appeal applies to:*

1. *the defendant;*
2. *the person liable under civil law but in respect of civil claims only;*
3. *the civil party, in respect of their civil claims only;*
4. *the public prosecutor;*
5. *governmental agencies, in cases where they have prosecuted;*
6. *the prosecutor general attached to the appeal court'.*

Burden of proof: If the victim is a civil party plaintiff, they must provide evidence of the offence. However, the judge has a very active role in the search for evidence.

Legal representation: Before the criminal court, legal representation is not obligatory.

Representation by associations: Associations may act, but this does not constitute legal representation of the victims. The principle is that an association may act before a criminal court if it has received clearance from the legislature. For example, section 2-5 CCP provides: *'Any association lawfully registered for at least five years on the date of an offence proposing through its constitution to defend the moral interests and the honour of the Resistance or those of deported persons may exercise the rights granted to the civil party in respect of the vindication of war crimes or crimes or offences of collaboration with the enemy, or the destruction or defacement of monuments, or the desecration of graves, or the offences of defamation or insult, which have caused direct or indirect harm to its objectives'.* There are many diverse forms of clearance.

Legal aid: Provided for by Law No. 91-647 of 10 July 1991, legal aid is intended to assist individuals whose resources are insufficient to assert their rights in court. In 2011, for full legal aid, monthly income must be less than €929; for partial assistance, the ceiling was set at €1393. Applications for legal aid are made through the Legal Aid Office located in each District Court.

Legal assistance: There are houses of justice and law which, since 1998, *'provide a local judicial presence and contribute to crime prevention, victim support and access to law. Alternative criminal proceedings measures and measures for the amicable resolution of disputes are available'* (Article R. 131-1 COJ).

Costs associated with the procedure: Access to legal recourse is free: *'Notwithstanding any provision to the contrary, the legal costs for committing a crime, offences and petty offences are paid by the State and may not be recovered from persons convicted'.* (Article 800-1 paragraph 1 CCP). However, according to paragraphs 2 and 3 of Article 800-1 CCP: *'However, pursuant to Articles 177-2 or 212-2, when committed against the plaintiff whose*

constitution as civil party has been deemed abusive or dilatory, litigation costs corresponding to the expert reports ordered at the request of the latter may, as provided by these articles, be charged to the plaintiff by the judge or the investigating court. This paragraph does not apply in criminal matters and in matters of crimes against persons under Book II of the Criminal Code or when the plaintiff was granted legal aid. When the convicted person is a corporation, the legal costs incurred during the procedure are charged to the corporation. However, the court may waive this rule and decide to support all or part of court costs by the State'.

Furthermore, the CGI has fixed fees for procedures: *'The decisions of criminal courts, except those ruling solely on civil claims, are subject to a fixed duty for each party convicted by due process. This duty is:*

- 1) €22 for orders in criminal cases for custodial crimes or lesser offences;*
 - 2) €22 for other decisions of the courts and police courts and those of nearby jurisdictions that do not rule by trial;*
 - 3) €90 for the decisions of criminal courts. However, this duty is increased to €180 if the offender did not appear personally, when the summons was issued in person or it is established that the defendant had knowledge of the summons, unless tried in their absence as provided by the first and second paragraphs of Article 411 of the Code of Criminal Procedure. This increase does not apply if the offender voluntarily pays the amount of the fixed procedure within one month from the date they learned of the decision;*
 - 4) €120 for the decisions of appellate courts with criminal and police jurisdiction;*
 - 5) €375 for the decisions of criminal courts.*
- €150 for the decisions of the Court of Cassation with criminal or police jurisdiction'.*

This same provision also provides that: *'This duty is collected from each convicted party as a fine and pecuniary penalty by the competent public accountants. Persons convicted of the same offence are jointly liable to pay a flat fee of procedure. This duty is also recovered, as in criminal proceedings, for the decisions of dismissal of the case or acquittal of the accused where the plaintiff bringing the legal action has stood as civil party'.*

Moreover, if a complaint is made with plaintiff as civil party, Article 88 of the Criminal Procedure Code provides that: *'The investigating judge makes an order recording the filing of the complaint. Where no legal aid was granted, the judge fixes according to the income of the civil party the amount of the payment into court the latter must deposit with the court office and the time limit within which the payment must be made, under penalty of inadmissibility of the complaint. The judge may exempt the civil party from making a payment into court'.* According to Article 88-1 CCP *'The payment into court fixed pursuant to article 88 secures the payment of any civil fine liable imposed pursuant to the first paragraph of article 177-2. The amount paid into court is returned by the investigating chamber where no such fine is ordered by the investigating judge or where the prosecutor or the civil party appeals'.*

Average length of procedure: Statistics are not available. Under Article 399 of the Code of Criminal Procedure: *'The number and the dates of correctional court hearings are fixed by a joint decision taken by the president of the district court and the district prosecutor. The same applies to the projected composition of these hearings, without prejudice to the powers belonging to the public prosecutor in relation to hearings. The decisions provided for by the present Article are taken after hearing the opinion of the general assembly of the court, at the end of each judicial year for the following judicial year, and may, if necessary, be modified*

during the course of the year under the same conditions. Where it is impossible to reach joint decisions, the number and dates of correctional court hearings are fixed by the president of the acting district court, and the projected composition of these hearings is determined by the district prosecutor, after hearing the opinion of the president of the appeal court and the prosecutor general'.

The reasonable time requirement is also applicable in criminal matters (Article 6.1 ECHR).

Number 7: Fines

Criminal Procedure

Legal basis: Article R. 625-10 of the Criminal Code: *'When personal data collection and personal data-processing is required by law, the following offences are punishable by a fine for contraventions of the fifth class:*

1) Failure to inform the person from whom personal data are collected of:

a) the identity of the data-processor and, where applicable, its representative;

b) the purpose of the processing for which the data are intended;

c) the compulsory or optional nature of responses;

d) the possible consequences of a failure to provide responses;

e) the recipients or categories of recipients of the data;

f) their rights to object, query, access and correct data;

g) where appropriate, the transfer of personal data towards a country outside the European Community;

2) When the data is collected by questionnaire, failure to provide information on the questionnaire on:

a) the identity of the data-processor and, where applicable, its representative;

b) the purpose of the processing for which the data are intended;

c) the compulsory or optional nature of responses;

d) their rights to object, query, access and correct data;

3) Failure to inform clearly and accurately any person using electronic communications networks of:

a) the purpose of any action to access, by electronic transmission, information stored in the connection terminal equipment or to register, via the same route, information in its connection terminal equipment;

b) the means at their disposal to oppose such action;

4) Failure to provide the person concerned, when personal data were not collected directly from that person, of the information listed in 1 and 2 at the time of the recording of data, or if a disclosure of data to third parties is foreseen, no later than the first communication of any data'.

Article R. 625-11 of the Criminal Code: *'When personal data collection and personal data-processing is required by law, the following offences are punishable by a fine for contraventions of the fifth class for failure to respond to the requests of an individual who proves their identity intending to obtain:*

1. *confirmation on whether their personal data are subject to data processing;*
2. *information on the purposes of the processing, the categories of the personal data processed and the recipients or the categories of recipients to whom the data are disclosed;*
3. *if necessary, information on the transfer of personal data under consideration to a State that is not a Member State of the European Union;*
4. *disclosure, in an accessible form, of the personal data relating to them and any information available as to the origin of the data;*
5. *information that helps to know and question the reasoning underlying the automatic processing on which a decision has been founded that has legal consequences for the interested party.*

Refusing to deliver, at the request of the interested party, a copy of the personal data relating to them, if necessary for a fee not exceeding the cost of reproduction, shall lead to the same penalty.

The offences mentioned in this Article shall not however be regarded as existing if the refusal to reply is authorised by the law either in order not to infringe copyright or because they are obviously abusive requests, in particular with respect to their number, their repetitive or systematic nature or because the personal data are stored in a form obviously excluding any risk of infringement of privacy of the data subject, for a period of time not exceeding the period necessary only for statistical, scientific or historical research purposes'.

Article R. 625-12 of the Criminal Code: 'The data controller shall be sentenced to pay the fines provided for offences of the fifth class for not carrying out, at no expense to the applicant, the operations requested by an individual proving their identity and who seeks to have personal data related either to themselves or to a deceased person of whom they are an heir rectified, supplemented, updated, blocked or erased whenever these data are inaccurate, incomplete, equivocal, out of date, or where their collection, use, dissemination or storage is prohibited'.

Article R. 625-12 of the Criminal Code: 'Repetition of offences provided for under this Section shall be punished in accordance with Articles 132-11 and 132-15'.

Article R. 10-1 of the Postal and Electronic Communications Code: 'The use in direct marketing operations of personal data contained in the lists of subscribers or users of public telephone services on persons who have expressed opposition, under the provisions of the 4 Article R. 10, whatever the mode of access to such data, shall be punished, for each communication or each call, by a fine for contraventions of the fourth class, without prejudice to the application of the first paragraph of Article 226-18 of the Criminal Code. Direct marketing of natural persons in violation of the first paragraph of Article L. 34-5 shall be punished for each communication by a fine for contraventions of the fourth class, without prejudice to the application of the first paragraph of Article 226-18 of the Criminal Code'.

Point of precision: The victim can either instigate or support public legal action as civil party plaintiff. On this occasion, they may also seek redress of for their civil claims before a criminal court, which will apply the rules of civil law mentioned above.

NB: The information below concerns the situation of the civil party plaintiff whose procedural rights differ from those of the accused.

Appeal Procedures: Article 546 CCP deals with this issue: *'The right to appeal is open to the defendant, the person liable under civil law, the district prosecutor, the prosecutor general and the prosecuting officer attached to the police court and the local court, where the fine incurred is that provided for minor offences of the fifth class, where the penalty provided by paragraph 1 of Article 131-16 of the Criminal Code has been imposed, or where the fine imposed is higher than the maximum fine incurred for petty offences of the second class. Where damages have been awarded, the right to appeal is also open to the defendant and to the person liable under civil law. In every case, this option is open to the civil party in respect of their civil claims only. In cases prosecuted on the application of the water and forestry administration an appeal is always possible for any party involved, whatever the type and level of the sentence'*.

Burden of proof: If the victim is a civil party plaintiff, they must provide evidence of the offence. However, the judge has a very active role in the search for evidence.

Legal Representation: Before the police court, legal representation is not obligatory.

Representation by associations: see above in tort.

Legal aid: see above in tort.

Legal assistance: see above in tort.

Costs associated with the procedure: see above in tort.

Average length of procedure: see above in tort.

Number 8: Annulment of an administrative act

Administrative proceedings before administrative courts

Legal basis: According to Article L311-1 of the Code of Administrative Justice (CAJ), administrative courts are, in the first instance, common law judges of administrative litigation, on reserve that the purpose of the litigation or the interest of the good judicial administration requires attribution to another administrative court.

Appeal procedures: Administrative courts adjudicate in the first instance. Their decisions may be appealed at an Administrative Court of Appeal (Article L321-1 CAJ).

Burden of proof: There is no text which provides general guidance for the burden of proof in administrative proceedings. The parties are free to choose the evidence they wish to present and the judge is free to assess its value and assign onus of the burden of proof. The judge plays a crucial role and may in particular require that the parties shall communicate all

information and documents she or he considers relevant to the resolution of the dispute. The judge may also give notice to the administration to be informed of the rationale for the decision in question, even though the decision may come under the administration's discretionary powers.

Legal representation: representation of the parties is not required before administrative courts. Where a party is represented before the tribunal by a representative, Article R 431-1 CAJ provides that the pleadings, except for the notification of the decision, are made only through that representative. Queries and submissions must be signed by their author and, in the case of a legal entity, by a person establishing their authority to act on that entity's behalf (Article R 431-4 CAJ).

Legal aid: The parties may, where appropriate, claim legal aid provided for by Law No. 91-647 of 10 July 1991 relative to legal aid (Article R441-1 of the Code of Administrative Justice).

Representation by associations: Associations, like individuals, must demonstrate their right to take action. A distinction must be made according to whether the entity defends its own interests or the interests for which it is responsible. In the latter case, if the claim is directed against a regulatory act, the judge verifies that the offence was committed in the field of activity of the entity and breaches the collective interests of all members of the entity. If the claim presented by an association concerns an individual decision, the *locus standi* will be recognised if the decision affects the collective interests defended by the group.

Costs associated with the procedure: Since Law No. 2011-900 of 29 July 2011, for a case to be accepted, a tax of €35 is demanded: '*a contribution to legal aid of €35 is collected for each civil, commercial, industrial tribunal, social and rural proceeding brought before a court or an administrative court*' (Article 1635 I Q of the General Tax Code). Any person who applies to the administrative judge must therefore pay this contribution, except for persons receiving legal aid, or for cases of litigation relating to entry, stay and deportation of aliens and 'petitions for civil liberties' (*référé-liberté*) (Article L. 521-2 CAJ). Added to this, where appropriate, are the costs of representation by a lawyer (optional).

Average length of procedure: According to the Statistical Yearbook of the Ministry of Justice (2009-2010), the average duration of proceedings was, for the year 2008, 16.7 months in the administrative courts (excluding emergency procedures), and 14.3 months at the administrative Court of Appeal. The reasonable time requirement again applies⁵⁷.

⁵⁷ France, State Council (2006 (a)); France, State Council (2006 (b)). The State Council has clarified that 'the reasonableness of the time of trial of a case must be assessed in a manner that is both comprehensive - taking account, *inter alia*, the appeal procedures - and meaningful, in taking into account its complexity, the conditions of conduct of the proceedings and, in particular, the parties' conduct throughout, but also, to the extent that the court is aware of evidence, the interests that there may be, for either party, given their particular circumstances, the circumstances of the dispute and, where applicable, by its very nature, the case must be dealt with quickly'. (France, State Council (2002)).

Point of precision of the procedure: In order to make a claim before the administrative judge, the applicant must meet three conditions of admissibility. Under Article R421-1 of the Code of Administrative Justice, the court may only be seized by way of appeal against a decision, and this within two months from the notification or publication of the contested decision. The applicant must also demonstrate their interest in bringing the case. Publication in electronic form in the Official Journal of the French Republic marks the beginning of the period of appeal available to a third party against individual decisions, including decisions from independent administrative authorities, or independent public authorities or institutions with legal status. Unless statutory or regulatory provisions point to the contrary, failure to respond to a claim for more than two months by the competent authority shall be considered a rejection by that authority of the claim (Article R421-2 CAJ).

Number 9: Annulment (of the provisions) of a decree or a regulatory act, a circular or order of general applicability from a Minister or an authority with national jurisdiction.

Administrative proceedings before the State Council

Legal basis: According to Article R311-1 of the Code of Administrative Justice, the State Council has jurisdiction in the first and last instance on appeals against regulatory acts of Ministers and other authorities with national jurisdiction and against their general circular instructions, and appeals against decisions taken by certain supervisory or regulatory authorities (including the Regulatory Authority for Electronic Communications and Postal Services (*Autorité de Régulation des Communications Electroniques et des Postes*), the Audiovisual Board (*Conseil Supérieur de l'Audiovisuel*) and the National Commission for Data Protection and Civil Liberties).

Appeal procedures: The State Council in first and last instance

Burden of proof: see above.

Legal Representation: According to Article R432-1 of the Code of Administrative Justice, admissibility requires that the application and pleadings of the parties shall be presented to the State Council by a lawyer. (However, Article R432-2 provides that these provisions are not applicable in legal action for abuse of power by administrative authorities and which are appealed on their legality. In these cases, the claim shall be signed by the interested party or their representative).

Legal aid: see above

Representation by associations: Associations, like individuals, must demonstrate their right to take action. A distinction must be made according to whether the entity defends its own interests or the interests for which it is responsible. In the latter case, the judge verifies that the offence was committed in the field of activity of the entity and breaches the collective interests of all members of the entity.

Costs associated with the procedure: see above.

Average length of procedure: According to the State Council, '*the average time from filing a complaint to the Council of State and judgment is one year*'⁵⁸. The reasonable time requirement also applies to administrative matters (Article 6.1 ECHR).

Number 10: Interim Measures

Administrative procedure

Legal basis: Article L. 521-2 of the Code of Administrative Justice:

'On an application in this sense justified by its urgency, the judge for urgent applications may order any action necessary to protect a fundamental freedom from a serious and manifestly illegal violation of privacy that a legal entity or a body responsible for managing a public service may have committed in the exercise of its powers. The judge will make a decision within forty-eight hours'.

Appeal procedures: According to Article L. 523-1 CJA, '*Decisions pursuant to Article L. 521-2 are appealable before the State Council within fifteen days of notification*'. No challenges to appeal decisions are possible, except for challenges to summary decisions (*ordonnances de tri*).

Burden of proof: The urgency of the case must be established, as must a serious and manifestly illegal breach of a fundamental right. The administration must also be deemed to have breached privacy laws in the exercise of its powers.

Legal Representation: Article R. 522-5 CAJ: '*The applications for which the judge prescribes a measure pursuant to Article L. 521-2 are exempt from counsel*' (the same is true on appeal).

Legal aid: Provided for by Law No. 91-647 of 10 July 1991, legal aid is intended to assist individuals whose resources are insufficient to assert their rights in court. In 2011, for full legal aid, monthly income must be less than €929; for partial assistance, the ceiling was set at €1393. Applications for legal aid are made through the Legal Aid Office located in each District Court.

Legal assistance: There are houses of justice and law which, since 1998, '*provide a local judicial presence and contribute to crime prevention, victim support and access to law. Alternative criminal proceedings measures and measures for the amicable resolution of disputes are available*' (Article R. 131-1 COJ)

Costs associated with the procedure: Since decree No. 2011-1202 of 28 September 2011, for a case to be accepted, a tax of €35 is demanded: '*a contribution to legal aid of €35 is collected for each civil, commercial, industrial tribunal, social and rural proceeding brought*

⁵⁸

www.conseil-etat.fr/fr/introduire-une-requete-devant-le-conseil/.

before a court or an administrative court' (Article 1635 A Q, I). It is payable by the party initiating a proceeding. However, it is not paid, notably, by those who benefit from legal aid.

Furthermore, Article L. CAJ 761-1 states that *'In all instances, the judge sentences the party liable for costs or, failing that, the losing party, to pay the other party the amount determined in respect of expenses incurred which are not included in costs. The judge will consider the assets or the financial situation of the convicted party. The judge may even, for reasons based on similar considerations, state that there are no grounds for such payments'*.

Average length of procedure (where applicable): Article L. 521-2 of the Administrative Justice Code provides that the judge must rule within approximately 48 hours (also on appeal).

Number 11: Warnings, notices, penalties or injunctions to stop the treatment or withdrawal of authorisation (Article 45, I); Interruption of the implementation of treatment, warning, locking of data, informing the Prime Minister (Article 45, II);

Proceedings before an independent administrative authority (IAA)

Legal basis:

Article 45 of Law No. 78-17 of 6 January 1978:

I. – The Sub-Committee (formatian restreinte) of the National Commission for Data Protection and Civil Liberties may, after due hearing of all parties, issue a warning to a data controller failing to comply with the obligations of this Law. Such warning shall be regarded as a sanction. The Chair of the Commission may also serve a formal notice to comply on said data controller to stop the non-compliance within a given deadline. In case of urgency, this deadline may be limited to five days. If the data controller complies with the notice served, the Chair of the Commission shall pronounce the procedure to be closed. Should the data controller fail to comply with the notice served, the Sub-Committee may pronounce the following sanctions, after due hearing of the parties:

1) Financial penalty, under the conditions provided in Article 47 (amount and collection of a fine), except in cases where the processing is carried out by the State;

2) Injunction to stop the processing, where applicable, under the provisions of Article 22 (notification), or a withdrawal of the authorisation given in application of Article 25.

II. – Whenever the processing or the use of processed data leads to a violation of the rights and liberties as mentioned in Article 1, the Sub-Committee may, after hearing both parties, initiate an emergency procedure, as defined by a decree of the Council of State, in order to:

1) interrupt the processing, for a maximum period of three months, provided that the processing is not one of those mentioned in Section I and Section II (processing for State

security and criminal offences with political, philosophical, medical and sexual data) of Article 26, or carried out by the State as mentioned in Article 27 (processing, NIR = Number of Entry in Register, i.e. social security number, biometrics, census, online services);

2) issue a warning as specified in the first paragraph of section I above;

3) decide that some of the processed personal data shall be locked, for a maximum period of three months, provided that the processing is not one of those types mentioned in Section I and Section II of Article 26;

4) notify the Prime Minister so that he/she may take measures as necessary to stop the violation, if the processing is one of those types mentioned in Section I and Section II of Article 26. The Prime Minister shall then inform the Sub-Committee of the remedies taken within two weeks of receiving the notification.

III. – In case of serious and immediate violation of the rights and liberties mentioned in Article 1 (human rights, privacy, public or individual liberties) the Chair of the Commission may request, in summary proceedings, the competent jurisdiction to order, if necessary applying a daily penalty, any security measure necessary for the protection of these rights and liberties'.

Article 46 of Law No. 78-17 of 6 January 1978:

'The penalties provided for in Section I (warning, financial penalties, injunction to stop processing, withdrawal of authorisation) and in Section II Paragraph 1 (interruption of processing) of Article 45 shall be pronounced on the basis of a report established by one of the members of the CNIL appointed by the Chair of the Commission among the members not belonging to the Sub-Committee. The data controller shall be notified of said report and may submit his/her remarks, and may be represented and assisted. The reporting party may present verbal comments to the Sub-Committee but may not participate in its deliberations. The Sub-Committee may hear any person who might usefully contribute to its investigation, including Commission staff members at the request of the General Secretary. The Sub-Committee may make public the sanctions issued. It may also order their publication in such journals, newspapers or other media as it designates at the expense of the sanctioned parties. The Chair of the Commission may instruct the Bureau (Executive Committee) to make public the formal notice to comply served under the provisions of Section I, 2 of Article 45. Once the Chair of the Commission has declared a procedure closed under the conditions defined in Section I Paragraph 3, said closing shall be published under the same conditions as the formal notice to comply. The decisions taken by the Select Committee in application of Article 45 (all measures and penalties) shall be grounded and notified to the data controller. An appeal against the penalty on grounds of both facts and law may be made before the Council of State'.

Article 47 of Law No. 78-17 of 6 January 1978:

'The amount of the financial penalty provided under Article 45 Section I shall be proportional to the severity of the breaches committed and to the profits derived from said breach. In case of a first breach, the penalty may not exceed €150,000. In the event of a second breach within five years from the date on which the preceding financial penalty becomes

definitive, it may not exceed €300,000 or, in case of a legal entity, 5% of gross revenue for the latest financial year, within a maximum of €300,000.

Whenever the Sub-Committee issues a financial penalty that is final before the criminal court has definitively ruled on the same or related facts, the criminal court judge may order the financial penalty to be deducted from the fine pronounced.

The financial penalties shall be collected as State debts, other than taxes and income from State assets'.

Article 48 of Law No. 78-17 of 6 January 1978:

'The powers provided under Article 44, as well as in Section I, in Section II Paragraph 1, and in Section III of Article 45 shall be applicable as regards any processing operations carried out, whether fully or partially, on the national territory, including where the data controller is established in another Member State of the European Union'.

Article 49 of Law No. 78-17 of 6 January 1978:

'At the request of an authority exercising similar powers in another Member State of the European Union, the Commission may undertake verifications under the same conditions as those provided under Article 44, except in the case of processing mentioned in Section I and Section II of Article 26.

The Chair of the Commission or the Sub-Committee may, at the request of an authority exercising similar powers in another Member State of the European Union, take the decisions mentioned in Articles 45 to 47, and under the conditions provided under said Articles, except in the case of processing mentioned in Section I and Section II of Article 26.

The Commission is authorised to disclose the information that it obtains or holds to authorities exercising similar powers in other Member States of the European Union at their request'.

Appeal procedures : The texts do not provide the opportunity for the applicant to challenge the closing of their complaint file by the CNIL. Moreover, under Article 46 of Law No. 78-17 of 6 January 1978 relating to data protection and civil liberties, *'An appeal against the penalty on grounds of both facts and law may be made before the Council of State'.*

Burden of proof: As regards the right of access, opposition and/or correction, the plaintiffs must provide written documentation of referral to the agency in question dating back at least 2 months (the legal deadline within which the data controller is obliged to respond). Complaints on another subject (e.g. failure to file information, breach of security, files not declared to the CNIL, etc.) may be submitted to the CNIL without deadline or conditions. In terms of indirect access (processing concerning state security, defence or public security), individuals must provide a copy of identification papers indicating their date and place of birth to guard against any risk of mistaken identity in the conduct of audits. They are also asked to produce all documents relevant to the investigation of their application (copies of court decisions in their favour, copy of Schengen visa refusals, etc.). As regards the defendant data processors in a prosecution, the CNIL collects evidence of any identified failings.

Legal Representation: Any person may write personally to the CNIL for a complaint for violation of the Data Protection Act (approaches can be made online or by mail), exercise

their right of indirect access or obtain the contact details of the person handling the complaint in order to exercise their rights.

Representation by associations: Associations or unions may address the CNIL.

Costs associated with the procedure: The procedure is free of charge (complaints may be made online, otherwise there is the postal cost of sending a letter to the CNIL, and, possibly prior to or after the event, the data processor). No fees are charged to the plaintiffs.

Average length of procedure (not limited here to cases leading to financial penalties): According to the CNIL, *'duration of procedures varies from several days to several months depending on the complexity of the complaint, the quality of responses made by the person responsible for the file, or the actions taken to process the application (on-site inspection, notice, penalty procedure)'*. Indicative durations provided by the CNIL in handling records (from registration to closure) are as follows: 1 to 6 months for work-related complaints, 1 to 4 months for most online complaints, 2 to 3 months for written complaints 'objections to receiving advertising', 3 to 6 months for the bank-credit sector, and from 1 to 4 months for the internet sector (excluding online complaints).

Regarding complaints leading to a financial penalty (1% on average, 5 cases in 2011), the average time from filing the complaint and notification of penalty is about 22 months. (It is approximately 7 months between recording of the complaint and issuing of a notice, prior to a possible penalty).

Processing times of requests for indirect access (which may result in the cessation of processing or rectification of details) are laid down in Articles 87 and 87-1 of Decree No. 2005-1309 of 20 October 2005: 4 months for general requests, six months for the files under the control of prosecutors. In practice, the time deadlines for police files are not often respected. Thus, according to the CNIL *'In general, the average processing time of applications extends to 12 months or 18 months if the applicant is registered as a "third party" in several cases'*. According to the CNIL, respect of deadlines depends *'in large part, on the reactivity of the various parties (the administrative services, the public prosecutor who must indicate at their request the legal outcomes in order to ensure the validity of the case or the request)'*, and other exogenous factors that may impact negatively (e.g. in 2008 the reorganization of the intelligence services of the Ministry of Interior). Results: In 2011, the CNIL issued 13 warnings (including 2 public), 5 penalties, 1 emergency procedure, 1 injunction to stop data-processing, and two acquittals.

Number 12: Measures freely available to the parties

Amicable agreement (contractual solution)

There are two different means of resolution:

Compromise: A compromise is a contract by which the parties settle a dispute, or prevent a dispute from arising (Article 2044 of the Civil Code). No means of appeal is available. In order to challenge, parties must have defensible interest in bringing the action (Article 2053 et seq.).

Conciliation: The parties may apply to a conciliator. According to Article 1 of Decree No. 78-381 of 20 March 1978:

'There shall be established justice conciliators whose mission it is to facilitate, without any legal action, the amicable settlement of disputes over rights to which the interested parties are freely entitled. They may also proceed to attempts at conciliation prescribed by law, except in matters of divorce and legal separation, in the manner and under the procedure laid down in Articles 831 to 835 of the new Code of Civil Procedure. Justice conciliators work on a voluntary basis'.

Moreover, under Article 127 CCP, the parties may reconcile, by themselves or on the initiative of the judge, at any point throughout the proceedings. If the parties reach an agreement, they may submit the agreement established by the conciliator to the judge for approval (Article 130 CCP).

Mediation: The judge may order mediation (Article 131-1 et seq. CCP): *'A judge hearing a litigation may, after having obtained the consent of the parties, appoint a third party who will hear them and confront their points of view to help them resolve the dispute dividing them. This power is also given to the summary procedure judge in the course of the proceeding'*. Mediation lasts a maximum of three months and may be renewed once at the request of the mediator.

Participatory agreement procedure (Article 2062 et seq. Civil Code and Article 1542 et seq. Code of Civil Procedure): The parties are assisted by a lawyer. Article 2066 of the Civil Code provides that the parties who, following the process of participatory agreement, reach an agreement resolving all or part of their dispute may submit this agreement for the judge's approval. However, when failing to reach agreement at the end of the process, the parties submit their dispute to court, they are exempt from the conciliation or mediation processes if these were previously planned.

Article 2065 of the Civil Code states that while it is ongoing, the participatory agreement process makes inadmissible any recourse to the courts to rule on the dispute. Though in cases of violation of the agreement, it is possible to go to court for judgment on the dispute.

*Arbitration: This will remove the dispute to the state courts. Arbitration carries fees (the amount is fixed by the parties). Article 1489 CCP provides that *'The arbitration agreement is not appealable unless otherwise agreed by the parties'*. However, *'The arbitration agreement may still be subject to appeal for annulment on condition that the right to appeal is in accordance with the agreement of the parties'* (Article 1494 CCP). The appeal and the request for annulment shall be brought before the court of appeal in whose jurisdiction the award was made (Article 1494).

With regard to legal aid: Article 10 of Law No. 91-647 of 10 July 1991 on legal aid provides that legal aid may be granted for all or part of the proceedings in order to achieve, before the commencement of the proceedings, compromise or agreement entered into as part of a participatory process under the civil code.

Bibliographie

Council of Europe instruments

- Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, CETS No. 005, 1950.

EU documents

- European Communities (2000) Charter of fundamental rights of the European Union, OJ 2000 C364/1.

National legislation

- France, The Code of Criminal Procedure (*Code de procédure pénale*), http://www.legifrance.gouv.fr/affichCode.do;jsessionid=43EEA5A82C0E7E2EE006A1E2B202AB01.tpdjo15v_2?cidTexte=LEGITEXT000006071154&dateTexte=20120515
- France, The Penal Code (*Code pénal*), www.legifrance.gouv.fr/affichCode.do;jsessionid=43EEA5A82C0E7E2EE006A1E2B202AB01.tpdjo15v_2?cidTexte=LEGITEXT000006070719&dateTexte=20120515
- France, The Code of Civil Procedure (*Code de procédure civile*), <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070716>
- France, The Civil Code (*Code Civil*), www.legifrance.gouv.fr/affichCode.do;jsessionid=43EEA5A82C0E7E2EE006A1E2B202AB01.tpdjo15v_2?cidTexte=LEGITEXT000006070721&dateTexte=20120515
- France, The Labour Code (*Code du travail*), www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006072050&dateTexte=20120525
- France, The Postal and Electronic Communications Code (*Code des postes et des communications électroniques*), <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070987>
- France, The Code of Public Health (*Code de la santé publique*), <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006072665&dateTexte=20120525>
- France, The Code of Social Action and Families (Code de l'action sociale et des familles), <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074069>
- France, The Monetary and Financial Code (*Code monétaire et financier*), <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006072026&dateTexte=20120525>
- France, The Code of Administrative Justice (*Code de justice administrative*), www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070933

- France, The Consumer Code (*Code de la consommation*),
<http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006069565>
- France, Law No. 78-17 relating to data protection and civil liberties (*Loi relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978,
http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=EE7DD7B7E5A05871E0E658F62ACF508D.tpdjo04v_1?cidTexte=LEGITEXT000006068624&dateTexte=20120525
- France, Law No. 95-73, 21 January 1995,
www.legifrance.gouv.fr/affichTexte.do;jsessionid=25DC5A9B199B74C58709FBAEA709CB44.tpdjo04v_1?cidTexte=JORFTEXT000000369046&dateTexte=19950124
- France, Law n° 2003-239, 18 March 2003,
<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000412199>
- France, Law No. 91-647, 10 July 1991,
www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006077779
- France, Law No. 91-647, 10 July 1991,
<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006077779>
- France, Decree No. 2011-1202, 28 September 2011,
www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000024602249&dateTexte&categorieLien=id
- France, Decree No. 2005-1309, 20 October 2005,
www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000241445
- France, Decree No. 78-381, 20 March 1978,
www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006062857&dateTexte=vig
- France, Center of criminal justice policy evaluation – DACG (*Pôle d'évaluation des politiques pénales – DACG*) (2012)

National case law

- France, Court of Cassation, First Civil Division (*Cour de cassation, 1^{ère} Chambre civile*), n° 94-14798, 5 November 1996.
- France, Court of Cassation, Criminal Division (*Cour de cassation, Chambre criminelle*), n° 96-82665, 3 February 1998.
- France, Court of Cassation, Third Civil Division (*Cour de cassation, 3^{ème} Chambre civile*), No. 04-20636, 26 September 2007.
- France, State Council (*Conseil d'Etat*), n° 317182 and n° 334014, 19 July 2010.
- France, State Council (*Conseil d'Etat*), n° 312051, 30 December 2009.
- France, State Council (*Conseil d'Etat*), n° 289693, 20 December 2006 (a).
- France, State Council (*Conseil d'Etat*), n° 285511, 24 November 2006 (b).

- France, State Council (*Conseil d'Etat*), n° 271711, 14 November 2005.
- France, State Council (*Conseil d'Etat*), n° 23957, 28 June 2002.
- France, Constitutional Council (*Conseil constitutionnel*), n° 2010-25 QPC, 16 September 2010.
- France, Court Appeal of Dijon, Social Division (*Cour Appel de Dijon, Chambre sociale*), Mille Services c/ Rémi X, 14 September 2010.

Literature

- Bensoussan, A. (2010) *Informatique et libertés*, 2ème éd., éd. Francis Lefebvre.
- Cadiet, L. and Jeuland, E. (2011) *Droit judiciaire privé*, LexisNexis, 7ème éd.
- Chapus, R. (2008) *Droit du contentieux administratif*, Montchrestien, 13ème éd.
- Giltard, D. (2011) *Livre V° Référé (Urgence)*, Dalloz.
- Frayssinet, J. (2006) 'Atteintes aux droits de la personne résultant des fichiers ou des traitements informatiques', in: *J.-Cl. Pénal Code*, fasc. 20.
- Maistre du Chambon, P., Lepage, A. and Salomon, R. (2010) *Droit pénal des affaires*, Litec, 2ème éd.
- Marcellin, S., Vivant M. and Costes L. (2011), *LAMY Droit de l'informatique et des réseaux*, Sa LAMY.
- Saint-Pau, J.-C. (2010) 'Jouissance des droits civils', in: *J.-Cl. Civil Code*, fasc.10.
- Ministry of Justice (2010) *Statistical Yearbook 2009-2010*, http://www.justice.gouv.fr/art_pix/1_stat_anur09_10_20101122.pdf
- Viney, G. and Jourdain, P. (2011) *Les effets de la responsabilité*, LGDJ, 3ème éd.

Websites

- www.cnil.fr
- www.conseil-etat.fr
- www.justice.gouv.fr/budget-et-statistiques-10054/annuaire-statistiques-de-la-justice-10304/annuaire-statistique-de-la-justice-23263.html.