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Ad Hoc Information Report

Data protection: Redress mechanisms and their use

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

Redress Mechanism Number	Type of possible outcomes of procedure	first Instance	Total Number of times this procedure was initiated in 2009 (please provide source of information in footnote)	Total Number of times this procedure was initiated in 2010 (please provide source of information in footnote)	Total Number of times this procedure was initiated in 2011 (please provide source of information in footnote)
1	Compensation	Regional Court	<sup>1</sup>	<sup>2</sup>	<sup>3</sup>
2	Disclosure, confidentiality, correction or deletion of information	Data Protection Commission	97 <sup>4</sup>	95 <sup>5</sup>	108 <sup>6</sup>
3	Confidentiality, correction or deletion of information	Regional Court	<sup>7</sup>	<sup>8</sup>	<sup>9</sup>
4	Fine	District Administrative Authority	Not available <sup>10</sup>	Not available <sup>11</sup>	Not available <sup>12</sup>

<sup>1</sup> Information request to the Federal Ministry of Justice sent on 20 April 2012 and reminder of 8 May remained unanswered. No data received by the Ministry of Justice as of 9 August 2012.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Austria, Data Protection Commission (2010), p. 13.

<sup>5</sup> Austria, Data Protection Commission (2012), p. 14.

<sup>6</sup> Ibid.

<sup>7</sup> Information request to the Federal Ministry of Justice sent on 20 April 2012 and reminder of 8 May remained unanswered. No data received by the Ministry of Justice as of 9 August 2012.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> As this procedure lies within the responsibilities of the District Administrative Authorities (their number is around 100 all over Austria) it was not possible to contact all of them in order to get the data as requested. The *Bundesländer* do not have statistics concerning these procedures.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<b>5</b>	<b>Injunction</b>	<b>Regional Court</b>	<sup>13</sup>	<sup>14</sup>	<sup>15</sup>
<b>6</b>	<b>Imprisonment</b>	<b>District Court</b>	<sup>16</sup>	<sup>17</sup>	<sup>18</sup>
<b>7</b>	<b>Recommendation (Ombud procedure)</b>	<b>Data Protection Commission</b>	<b>266<sup>19</sup></b>	<b>309<sup>20</sup></b>	<b>256<sup>21</sup></b>

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<sup>13</sup> Information request to the Federal Ministry of Justice sent on 20 April 2012 and reminder of 8 May remained unanswered. No data received by the Ministry of Justice as of 9 August 2012.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Austria, Data Protection Commission (2010), p. 13.

<sup>20</sup> Austria, Data Protection Commission (2012), p. 14.

<sup>21</sup> Ibid.

## Annex: Detailed information

### Ad Redress Mechanism Number 1: Compensation:

- Range of possible outcomes:  
Compensation for financial damage and compensation for non-pecuniary damage (*ideeller Schaden*) as foreseen in §33 (1) second sentence of the Data Protection Act 2000 (*Datenschutzgesetz 2000, DSG 2000*). For exposure a maximum amount of €20.000 is foreseen for non-pecuniary damage.<sup>22</sup>
- Legal basis:  
§33 DSG 2000 together with the general civil law provisions on compensation, §§1293 et seq. of the Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*).  
Compensation for non-pecuniary damage has been provided for by the amendment of 2010. In case of violations of privacy by exposure in a manner which is apt to compromise the person in public the relevant provision of the Media Act (§7) applies.
- Type of procedure:  
Civil procedure: According to §32 (4) DSG 2000 the Regional Courts (*Landesgerichte, LG*) act as courts of first instance in cases of data protection claims.
- Possibilities of appeal:  
Yes: According to §4 Jurisdiction Act (*Jurisdiktionsnorm, JN*) all cases which are situated at the Regional Courts have to be appealed at the Higher Regional Courts (*Oberlandesgerichte, OLG*). In cases of higher importance the final instance is the Supreme Court (*Oberster Gerichtshof, OGH*). According to §502 of the Code of Civil Procedure (*Zivilprozessordnung, ZPO*) the Supreme Court cannot be addressed if the amount in dispute is below €5.000. Furthermore the appeal (*Revision*) is only possible, if the decision is about a legal question of material or procedural law, which is highly relevant (*erhebliche Bedeutung*) for upkeeping legal certainty (*Rechtssicherheit*) and legal development (*Rechtsentwicklung*), e.g. if the Court of Appeal decides to move away from previous cases of the Supreme Court or if there is no or no consistent jurisprudence of the Supreme Court.
- Burden of proof:  
In general, the claimant has to file a complaint including a plea on guiltiness (*Verschulden*), damage caused (e.g. loss of profit), illegal conduct of the defendant, and causal links between damage and acts of the defendant.
- Available mechanism to lower the burden of proof:  
In data protection cases §33 (3) DSG 2000 foresees a reversal of the burden of proof. The defendant can only disburden himself/herself from accountability if he/she can prove that the cause for damage cannot be charged on him/her or his/her staff.<sup>23</sup>
- Requirement of legal representation: Can the complainant initiate/be active in a procedure on his own?  
In cases in front of all higher instances legal representation is obligatory (§27 (1) ZPO). The data protection act foresees a special rule, as all cases have to be brought in front of the Regional Courts, therefore legal representation is mandatory (§32 (4) DSG 2000).  
Persons with not enough income can apply for legal aid according to §§63 et seq. ZPO.
- Is there free legal advice/representation available from a public body (please specify the public body)?

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<sup>22</sup> Dohr/Pollirer/Weiss/Knyrim (2011), §33.

<sup>23</sup> Ibid.

The Data Protection Commission can be addressed free of charge regarding questions on data protection, but it does not offer free legal representation in court cases. There is no free legal advice or representation available from a public body. Only the Working Group Data (*ARGE Daten*) offers advice, but this is a NGO and not a public body.

- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?  
According to §32 (6) DSG 2000 the Data Protection Commission has to accede as an intervener to a trial if the claimant asks for it (according to §30 (1) DSG 2000) or if it is required to protect the interests of a higher number of natural persons. §§17 et seq. ZPO apply for this intervention.
- Cost of procedure:  
The average costs of procedure are hardly calculable as they depend on the amount claimed by the person submitting the claim, which may vary. It has to be noted, that there are court fees which have to be paid (also according to the amount in dispute, as laid down in the Court Fee Act (*Gerichtsgesetz, GGG*), furthermore counsel fees have to be paid. The counselling fees are laid down in the Lawyer Fee Act (*Rechtsanwaltstarifgesetz, RATG*). According to §§41 et seq. ZPO the costs of procedures of both sides have to be paid by the party losing the case.
- Average duration of procedure:  
In general, a procedure for compensation in data protection areas lasts around 1 to 2 years if all possibilities for appeal are taken.<sup>24</sup>
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011.<sup>25</sup>

**Ad Redress Mechanism Number 2: Individual complaint regarding disclosure (regarding public and private sector entities), confidentiality or correction or deletion of information (regarding public entities):**

- Range of possible outcomes:  
Legally binding decision by the Data Protection Commission ordering disclosure, confidentiality or correction or deletion of information. Against private sector entities only disclosure of the stored data can be ordered.<sup>26</sup>  
The decisions against private sector entities are executable, while those against public sector entities are purely declaratory (*Feststellungsbescheid*).
- Legal basis:  
§1 (3) Z 1, §1 (5), §26 and §31 DSG 2000.
- Type of procedure:  
Data Protection Commission: In cases concerning the public sphere the Data Protection Commission is entitled to decide on data protection claims. In cases concerning the private sector the Data Protection Commission is only mandated concerning the right to disclosure (§1 (3) Z 1 and §26 DSG 2000). Since the 2010 Amendment to the Data Protection Act the Data Protection Commission is able to informally close the proceedings regarding disclosure

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<sup>24</sup> Information received by Attorney Mag. Markus Dörfler on 18 April 2012.

<sup>25</sup> Information request to the Federal Ministry of Justice sent on 20 April 2012 and reminder of 8 May remained unanswered. No data received by the Ministry of Justice as of 9 August 2012.

<sup>26</sup> Dohr/Pollirer/Weiss/Knyrim (2011), §31 DSG, Rz 26.

if the violation of the rights seems to have ended and the claimant does not – within a reasonable time-limit – justify why he/she believes that the violation persists (§31 (8) DSG 2000).

Cases concerning the right to disclosure form the majority of cases in front of the Data Protection Commission. Standard forms for the procedures can be downloaded on the webpage of the Data Protection Commission.<sup>27</sup>

- Possibilities of appeal:

According to §40 (2) DSG 2000 no appeal is possible against decisions of the Data Protection Commission. So the Data Protection Commission acts as the first and last instance in this administrative procedure.<sup>28</sup> However, a claim can be filed to the Constitutional Court (*Verfassungsgerichtshof, VfGH*) according to Art. 144 (1) Constitutional Act (*Bundes-Verfassungsgesetz, B-VG*) if the person feels violated in his/her constitutional rights.<sup>29</sup> Furthermore, a claim to the Supreme Administrative Court (*Verwaltungsgerichtshof, VwGH*) against illegality of the decision can be filed according to §40 (2) fourth sentence DSG 2000.<sup>30</sup>

- Burden of proof:

The Data Protection Commission has to establish whether the provision has been violated, according to the principle of material establishment of the truth (*Offizialmaxime*, §37 of the General Administrative Procedure Law [*Allgemeines Verwaltungsverfahrensgesetz, AVG*]).

- Available mechanism to lower the burden of proof:

N.a.

- Requirement of legal representation:

No requirement of legal representation in this procedure. According to §10 (5) AVG legal representation is possible but not obligatory. Legal representation by an attorney is only required for complaints to the Constitutional Court and to the Supreme Administrative Court.

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

There is no free legal advice or representation available from a public body. According to the general rule of §13a AVG the Data Protection Commission shall advise complainants in procedural matters.

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

No, only the person affected by the claimed violation of the right to protection of data is entitled to file a complaint. The authority or private entity held accountable for the violation is the only other party of the proceedings that are conducted by the Data Protection Commission. No other authorities or organisations can join the proceedings.

- Cost of procedure:

According to §53 (1) DSG 2000 the procedure is free of charge.

- Average duration of procedure:

The length of procedure should not exceed six months (§73 AVG). The average duration lies between 3.5 and 6 months for 2010 and 2011.<sup>31</sup>

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

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<sup>27</sup> Austria, Data Protection Commission, see [www.dsk.gv.at/site/6189/default.aspx](http://www.dsk.gv.at/site/6189/default.aspx).

<sup>28</sup> Dohr/Pollirer/Weiss/Knyrim (2011), §40, Rz 8.

<sup>29</sup> Ibid, §31, Ziff. 24.

<sup>30</sup> Ibid.

<sup>31</sup> Austria, Data Protection Commission (2012), p. 16.

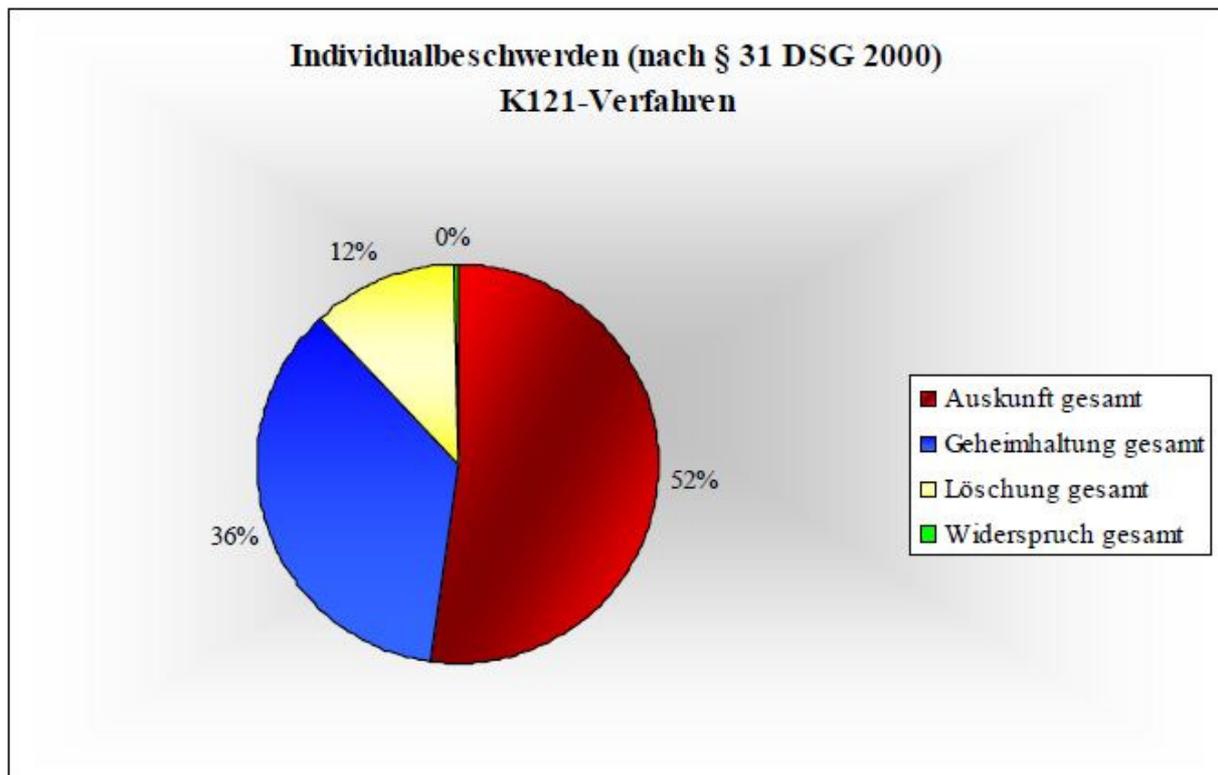
Number of all cases finalised<sup>32</sup>:

1 <sup>st</sup> half 2009	2 <sup>nd</sup> half 2009	1 <sup>st</sup> half 2010	2 <sup>nd</sup> half 2010	1 <sup>st</sup> half 2011	2 <sup>nd</sup> half 2011
94	32	57	41	51	33

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<sup>32</sup> Austria, Data Protection Commission (2010), p. 13; Austria, Data Protection Commission (2012), p. 14.  
Disaggregated information as available is presented in the figures below.

Statistics of 2007 until 2009 regarding outcomes of procedures:<sup>33</sup>



52% disclosure

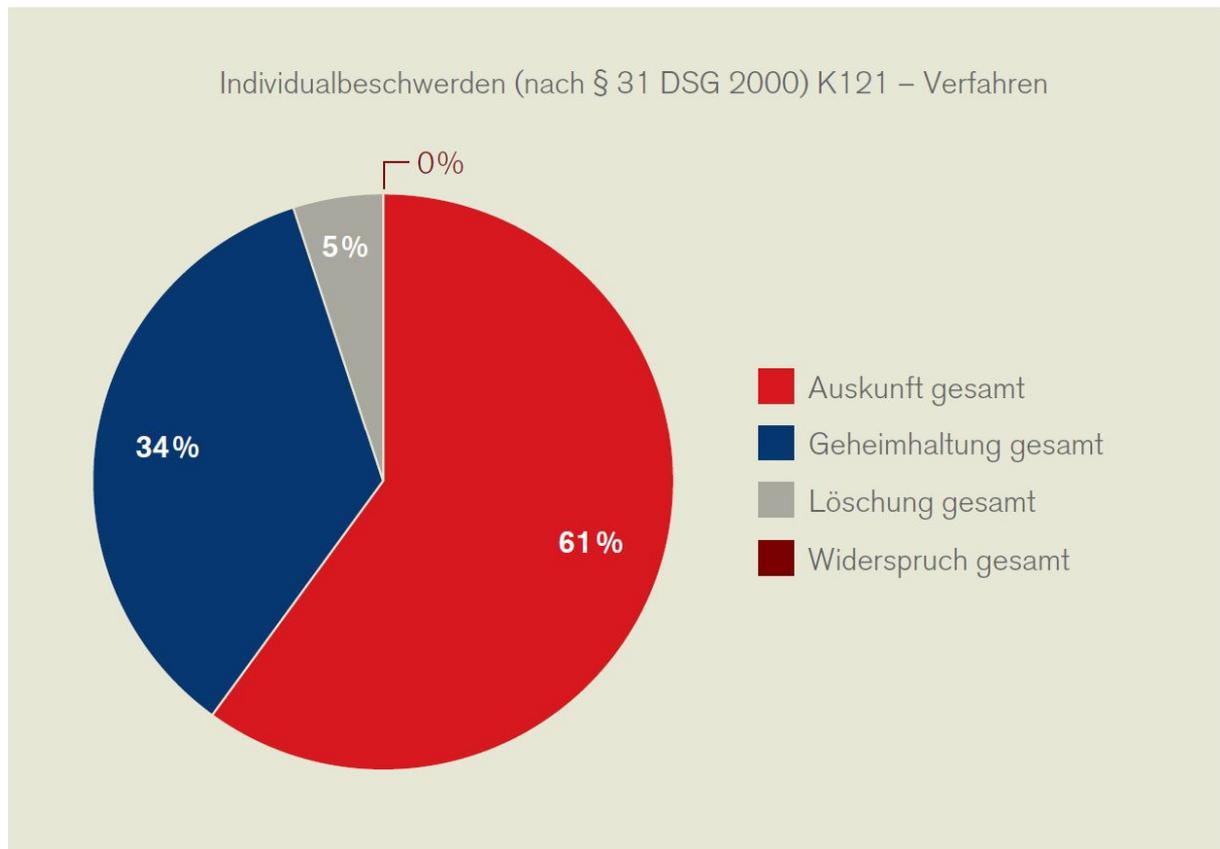
36% confidentiality

12% deletion

0% antinomy

<sup>33</sup> Austria, Data Protection Commission (2010), p. 15.

Statistics of 2010 until 2012 regarding outcomes of procedures:<sup>34</sup>



61% disclosure

34% confidentiality

5% deletion

0% antinomy

**Ad Redress Mechanism Number 3: claim for omission (*Unterlassungsklage*) regarding confidentiality or correction or deletion of information against private sector entities**

- Range of possible outcomes:  
The claimant has – according to §32 (2) DSG 2000 – a right to omission (*Unterlassung*). This right exists irrespective of culpability (*verschuldensunabhängig*).<sup>35</sup>
- Legal basis:  
§32 (1, 2) DSG 2000
- Type of procedure:

<sup>34</sup> Austria, Data Protection Commission (2012), p. 16.

<sup>35</sup> Dohr/Pollirer/Weiss/Knyrim (2011), §32, Rz 7.

Civil procedure: According to §32 (4) DSG 2000 the Regional Courts (*Landesgerichte, LG*) act as courts of first instance in cases of data protection claims.

- Possibilities of appeal:  
Yes: According to §4 JN all cases which are situated at the Regional Courts have to be appealed at the Higher Regional Courts (*Oberlandesgerichte, OLG*). In cases of higher importance the final instance is the Supreme Court (*Oberster Gerichtshof, OGH*). According to §502 ZPO the Supreme Court cannot be addressed if the amount in dispute is below €5.000. Furthermore, the appeal (*Revision*) is only possible if the decision is about a legal question of material or procedural law, which is highly relevant (*erhebliche Bedeutung*) for upkeeping legal certainty (*Rechtssicherheit*) and legal development (*Rechtsentwicklung*), e.g. if the Court of Appeal decides to move away from previous cases of the Supreme Court or if there is no or no consistent jurisprudence of the Supreme Court.
- Burden of proof:  
In general, the prerequisites for claims for omission (*Unterlassungsklage*) are danger of damage (*Schädigungsgefahr*) or danger of recurrence (*Wiederholungsgefahr*). The claimant has to prove those prerequisites. The right to omission exists irrespective of culpability (*verschuldensunabhängig*).<sup>36</sup>
- Available mechanism to lower the burden of proof: not applicable
- Requirement of legal representation: Can the complainant initiate/be active in a procedure on his own?  
In cases in front of all higher instances legal representation is obligatory (§27 ZPO). The data protection act foresees a special rule, as all cases have to be brought in front of the Regional Courts, therefore legal representation is mandatory (§32 (4) DSG 2000).  
Persons with not enough income can apply for legal aid according to §§63 et seq. ZPO.
- Is there free legal advice/representation available from a public body (please specify the public body)?  
The Data Protection Commission can be addressed free of charge regarding questions on data protection, but it does not offer free legal representation in court cases. There is no free legal advice or representation available from a public body. Only the Working Group Data (*ARGE Daten*) offers advice, but this is a NGO and not a public body.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?  
According to §32 (6) DSG 2000 the Data Protection Commission has to accede as an intervener to a trial if the claimant asks for it (according to §30 (1) DSG 2000) or if it is required to protect the interests of a higher number of natural persons. §§17 et seq. ZPO apply for this intervention.
- Cost of procedure:  
The average costs of procedure are hardly calculable as they depend on the amount claimed by the person submitting the claim, which may vary. It has to be noted that there are court fees which have to be paid (also according to the amount in dispute, as laid down in the Court Fee Act (*Gerichtsgebührengesetz, GGG*), furthermore counsel fees have to be paid. The counselling fees are laid down in the Lawyer Fee Act (*Rechtsanwaltstarifgesetz, RATG*).
- Average duration of procedure:  
No information available.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011:<sup>37</sup>

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<sup>36</sup> Ibid.

<sup>37</sup> Information request to the Federal Ministry of Justice sent on 20 April 2012 and reminder of 8 May remained unanswered. No data received by the Ministry of Justice as of 9 August 2012.

#### Ad Redress Mechanism Number 4: Administrative Fines:

- Range of possible outcomes:  
Administrative fine up to €500, up to €25.000 or up to €10.000; forfeiture of storage media, software and video recording equipment.
- Legal basis:  
§52 (1) and (2) DSG 2000, §52 (2a) DSG 2000.
- Type of procedure:  
Administrative (District Administrative Authorities, *Bezirksverwaltungsbehörden*). §52 (1) DSG 2000 includes acts regarding damages which have actually taken place, while §52 (2) deals with acts where damage can so far not be seen, but a neglect of duty (*Pflichtverletzung*) has taken place, which leads to endangering the rights of the person concerned. §52 (2a) DSG 2000 concerns cases where information regarding data or correction of data is not revealed or done in time.
- Possibilities of appeal:  
The person fined can lodge an appeal to the Independent Administrative Panel (*Unabhängiger Verwaltungssenat, UVS*) according to §51 Administrative Penal Act (*Verwaltungsstrafgesetz, VStG*). Against the rulings of the Independent Administrative Panel the person fined can file a complaint to the Supreme Administrative Court (*Verwaltungsgerichtshof, VwGH*) according to Art. 130 (1) lit a B-VG and/or to the Constitutional Court (*Verfassungsgerichtshof, VfGH*) if a person thinks that his/her constitutional rights have been violated (Art. 144 (1) B-VG). The person claiming a violation of her/his right to protection of data has no right to appeal.
- Burden of proof:  
The administrative authority has to prove the violation of the provision. In general negligence is sufficient for administrative criminal liability (§5 VStG). Liability for the acts penalised by §52 (1) DSG 2000 depends on the proof of intention.
- Available mechanism to lower the burden of proof: for example presumption of fact or reversal of the burden of proof or lump sum compensation arrangement etc.  
N.a.
- Requirement of legal representation:  
No requirement of legal representation, as the person claiming a violation of her/his right to data protection is not a party of the proceedings.  
The person accused also does not have to be represented by counsel.
- Is there free legal advice/representation available from a public body (please specify the public body)?  
There is no free legal advice or representation available from a public body.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?  
Proceedings are initiated ex officio whenever the District Administrative Authorities learn of an infringement of §52 DSG 2000. Therefore, everybody can inform the authority about such an infringement, but this does not give rise to a right to prosecution and the prosecuted person is the only party of the proceedings. The Data Protection Commission is obliged to inform the District Administrative Authorities if it learns about infringements of §52 (1) or (2) DSG 2000 (§30 [5]).
- Cost of procedure:  
The administrative penal proceedings are conducted ex officio and the person claiming a violation of his/her rights protected is not liable to any fees. According to §64 (2) VStG the

person fined is liable to reimburse costs of proceeding amounting to 10% of the imposed fee for the first instance proceedings and to a further 20% of the fee for the appeal proceedings.

- Average duration of procedure:  
In general, an act is time-barred after six months and prosecution is no longer allowed (§31 (2) VStG [(if no act of prosecution or no procedural act has been conducted during this period of time)]).
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011:<sup>38</sup>

#### Ad Redress Mechanism Number 5: Injunction:

- Range of possible outcomes:  
Injunction (*Einstweilige Verfügung, EV*).
- Legal basis:  
§32 (3) DSG 2000.
- Type of procedure:  
Civil procedure: According to §32 (4) DSG 2000 the Regional Courts (*Landesgerichte*) act as courts of first instance in cases of data protection claims.  
To secure claims for omission, according to the DSG 2000 injunctions can be issued. This means a faster procedure; a preliminary decision can be issued even without prior hearing of the opponent of the injured party (*gefährdete Partei*).<sup>39</sup> Contrary to the general provision regarding injunctions (§381 of the Execution Regulation [*Exekutionsordnung, EO*]), the endangerment of the omission according to the Data Protection Act has not to be claimed (*behauptet*) nor evidenced (*bescheinigt*).<sup>40</sup>
- Possibilities of appeal:  
According to §4 JN all cases which are situated at the Regional Courts have to be appealed at the Higher Regional Courts (*Oberlandesgerichte, OLG*). In cases of higher importance the final instance is the Supreme Court (*Oberster Gerichtshof, OGH*). According to §502 ZPO the Supreme Court cannot be addressed if the amount in dispute is below €5.000. Furthermore, the appeal (*Revision*) is only possible, if the decision is about a legal question of material or procedural law, which is highly relevant (*erhebliche Bedeutung*) for upkeeping legal certainty (*Rechtssicherheit*) and legal development (*Rechtsentwicklung*), e.g. if the Court of Appeal decides to move away from previous cases of the Supreme Court or if there is no or no consistent jurisprudence of the Supreme Court.  
In this procedure the opponent has the right to antinomy (*Widerspruch*) according to §397 EO, if he/she has not been interrogated prior to the issuance of the injunction.  
Appeal (*Rekurs*) according to §§402, 65 EO is possible for the parties (*Beschwer*), the time limit is 14 days. In general, there is the possibility of further appeal (*Revisionsrekurs*) to the Supreme Court.
- Burden of proof:

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<sup>38</sup> As this procedure lies within the responsibilities of the District Administrative Authorities (their number is around 100 all over Austria) it was not possible to contact all of them in order to get the data as requested. The *Bundesländer* do not have statistics concerning these procedures.

<sup>39</sup> Dohr/Pollirer/Weiss/Knyrim (2011), §32, Rz 8.

<sup>40</sup> Ibid.

If so asked for by the court, the claimant, according to §389 EO has to show his/her claim credibly (*glaubhaft machen*).

- Available mechanism to lower the burden of proof:  
See above (§389 EO).
- Requirement of legal representation:  
In cases in front of all higher instances legal representation is obligatory (§27 ZPO). The data protection act foresees a special rule, as all cases have to be brought in front of the Regional Courts, therefore, legal representation is mandatory (§32 (4) DSG 2000), even in the first instance.
- Is there free legal advice/representation available from a public body (please specify the public body)?  
There is no free legal advice or representation available from a public body. According to the general rules on legal aid in civil proceedings, the claimant may be exempted from court fees and be supported by an attorney free of charge (§§63, 64 ZPO).
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?  
No. There is no provision foreseeing locus standi for the Data Protection Commission.
- Cost of procedure:  
Injunctions are in a first step always made on the cost of the claimant, independently of a right to reimbursement of costs (§393 EO). The person losing the main (omission) procedure has to reimburse all costs.  
The average costs of procedure are hardly calculable as they depend on the amount claimed by the person submitting the claim, which may vary. It has to be noted that there are court fees which have to be paid (also according to the amount in dispute, as laid down in the Court Fee Act (*Gerichtsgebührengesetz, GGG*), furthermore, counsel fees have to be paid. The counselling fees are laid down in the Lawyer Fee Act (*Rechtsanwaltstarifgesetz, RATG*).
- Average duration of procedure:  
No information on average duration of procedure available.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011:<sup>41</sup>

#### **Ad Redress Mechanism Number 6: Imprisonment:**

- Range of possible outcomes:  
Imprisonment up to one year
- Legal basis:  
§51 DSG 2000: *“Whoever with the intention to enrich himself or a third person unlawfully or to harm someone in his entitlement guaranteed according to § 1 para 1 deliberately uses personal data that have been entrusted to or made accessible to him solely because of professional reasons, or that he has acquired illegally, for himself or makes such data available to others or publishes such data with the intention to make a profit or to harm others, despite the data subject’s interest in secrecy deserving protection, shall be punished by a court with imprisonment up to a year, unless the offence shall be subject to a more severe punishment pursuant to another provision”.*

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<sup>41</sup> Information request to the Federal Ministry of Justice sent on 20 April 2012 and reminder of 8 May remained unanswered. No data received by the Ministry of Justice as of 9 August 2012.

- Type of procedure:  
Criminal procedure in front of the District Courts (*Bezirksgerichte*)
- Possibility of appeal:  
Possibility of “full” appeal (*volle Berufung*) of the accused to the Regional Courts (*Landesgerichte*). This includes nullity appeal (*Nichtigkeitsberufung*), sentence appeal (*Strafberufung*) and guilt appeal (*Schuldberufung*).
- Burden of proof:  
According to §14 Criminal Procedure Act (*Strafprozessordnung, StPO*) the court has to decide on basis of a free estimation of evidence; *in dubio pro reo*.
- Available mechanism to lower the burden of proof:  
N.a.
- Requirement of legal representation:  
No legal representation required in front of the District Court according to §61 StPO, but legal representation is needed for the stages of appeal.
- Is there free legal advice/representation available from a public body (please specify the public body)?  
A counsel for the defence to represent free of costs can be assigned to a person according to §61 (2) Z 3 StPO in the stages of appeal, but not for the first instance. This counsel (*Verfahrenshilfeverteidiger*) can only be granted if a person is not able to bear the costs for counsel and if a lawyer is needed and if the person filed for such a counsel.<sup>42</sup>
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?  
According to the general rules everybody may inform the prosecution authority about criminal acts. The authority has to initiate proceedings *ex officio* as soon as it learns about such acts.
- Cost of procedure:  
According to §380 StPO there are no court fees in criminal procedures. In case of conviction the accused according to §389 StPO has to pay a lump sum (amounting to between €50 and €1.000 in District Court Procedures), costs of official experts, cost of legal counsels, etc (§381 StPO). In any other case the costs are beared by the Federal State according to §390 (1) StPO.
- Average duration of procedure:  
No information available.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011.<sup>43</sup>

#### **Ad Redress Mechanism Number 7: Ombud procedure:**

- Range of possible outcomes:  
Recommendation
- Legal basis:

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<sup>42</sup> Fuchs/Ratz (2009), §61, Rz 34.

<sup>43</sup> Information request to the Federal Ministry of Justice sent on 20 April 2012 and reminder of 8 May remained unanswered. No data received by the Ministry of Justice as of 9 August 2012..

§30 (1) DSG 2000: *“Anyone shall have the right to lodge an application with the Data Protection Commission because of an alleged infringement of his rights or obligations concerning him pursuant to this Federal Act by a controller or processor”.*

- Type of procedure:  
Data Protection Authority, informal
- Possibility of appeal:  
No, it is a purely informal procedure without specific procedural rules.
- Burden of proof:  
N.a.
- Available mechanism to lower the burden of proof:  
N.a.
- Requirement of legal representation:  
No legal representation required.
- Is there free legal advice/representation available from a public body (please specify the public body)?  
This procedure in a way includes legal advice by the Data Protection Authority.
- Is there locus standi for DP authorities, civil society organisations and associations to initiate/be active in procedure?  
N.a.
- Cost of procedure:  
According to §53 DSG 2000 this procedure is free of charge.
- Average duration of procedure:  
No information available.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011:

Cases conducted within Ombud procedure:

1 <sup>st</sup> half 2009	2 <sup>nd</sup> half 2009	1 <sup>st</sup> half 2010	2 <sup>nd</sup> half 2010	1 <sup>st</sup> half 2011	2 <sup>nd</sup> half 2011
124	142	191	128	107	113

Between 2007 and 2011 around 90-91% of all submitted cases in the Ombud procedure concerned the private sector. The Data Protection Commission emphasises the high relevance of this procedure and states that although there is no legally binding decision within this procedure, it is almost always ended with a satisfactory result for the applicant.<sup>44</sup>

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<sup>44</sup> Austria, Data Protection Commission (2010), p. 17; Austria, Data Protection Commission (2012), p. 18.

<b>Official exact title EN</b>	<b>Official title (original lang.)</b>	<b>Full reference</b>
<b>Austria, Act on Civil Procedures</b>	Zivilprozessordnung - ZPO	Zivilprozessordnung, RGBl. 113/1895, last modified by BGBl. I Nr. 21/2011.
<b>Austria, Administrative Penal Act</b>	Verwaltungsstrafgesetz - VStG	Verwaltungsstrafgesetz 1991, BGBl. Nr. 52/1991 last modified by BGBl. I Nr. 50/2012.
<b>Austria, Administrative Procedure Law</b>	Allgemeines Verwaltungsverfahrensgesetz – AVG	Allgemeines Verwaltungsverfahrensgesetz – AVG, BGBl. Nr. 51/1991, last modified by BGBl. I Nr. 100/2011.
<b>Austria, Criminal Procedure Act</b>	Strafprozessordnung - StPO	Strafprozessordnung – StPO, BGBl. 631/1975 last modified by BGBl. Nr. I 35/2012.
<b>Austria, Court Fee Act</b>	Gerichtsgebührengesetz – GGG	Bundesgesetz vom 27. November 1984 über die Gerichts- und Justizverwaltungsgebühren (Gerichtsgebührengesetz, GGG), BGBl. Nr. 501/1984, last modified by BGBl. I Nr. 35/2012.
<b>Austria, Data Protection Commission (2010) Data Protection Report 2009 (1 July 2007-31 December 2009)</b>	Datenschutzbericht 2009	Datenschutzkommission (2010) Datenschutzbericht 2009, 1 Juli 2007 – 31 Dezember 2009, available at <a href="http://www.dsk.gv.at/DocView.axd?CobId=40344">http://www.dsk.gv.at/DocView.axd?CobId=40344</a> .
<b>Austria, Data Protection Commission (2012) Data Protection Report 2010-2011</b>	Datenschutzbericht 2010 – 2011	Datenschutzkommission, Datenschutzbericht 2010 – 2011 – Draft, not publicly available yet.

<b>Austria, Data Protection Law 2000</b>	Datenschutzgesetz 2000 – DSG 2000	Bundesgesetz über den Schutz personenbezogener Daten (Datenschutzgesetz 2000 – DSG 2000 2000), BGBl. I Nr. 165/1999 last modified by BGBl. I Nr. 51/2012.
<b>Austria, Execution Regulation</b>	Exekutionsordnung – EO	Exekutionsordnung (EO), RGBl. 79/1896 last modified by BGBl. I Nr. 139/2011.
<b>Austria, Federal Constitutional Law</b>	Bundesverfassungsgesetz – B-VG	Bundesverfassungsgesetz (B-VG), BGBl. Nr. 1/1930 last modified by BGBl. I Nr. 51/2012.
<b>Austria, Jurisdiction Norm</b>	Jurisdiktionsnorm – JN	Jurisdiktionsnorm (JN), RGBl. 111/1895 last modified by BGBl. I Nr. 128/2004.
<b>Austria, Lawyer Fee Act</b>	Rechtsanwaltstarifgesetz - RATG	Rechtsanwaltstarifgesetz (RATG), BGBl. Nr. 1989/1969 last modified by BGBl. I Nr. 58/2010.
<b>Dohr/Pollirer/Weiss/Knyrim (2011) Data Protection Act Commentary</b>	Dohr/Pollirer/Weiss/Knyrim (2011) DSG 2000 Kommentar <sup>2</sup>	Dohr/Pollirer/Weiss/Knyrim (2011): DSG 2000 Kommentar <sup>2</sup> , Vienna, Manz, online access via RDB.
<b>Fuchs/Ratz (2009) Criminal Procedure Act Commentary</b>	Fuchs/Ratz (2009) StPO Kommentar	Fuchs/Ratz (2009): StPO Kommentar, Vienna, Manz, online access via RDB.