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Litigation Chamber

Decision on the merits 71/2020 of 30 October 2020

File number: DOS-2018-07299

Subject: Online publication of images relating to a property with the address there

related and the name of the occupant

The Litigation Chamber of the Data Protection Authority, made up of Mr Hielke

Hijmans, chairman, and Messrs. Dirk Van Der Kelen and Jelle Stassijns, members;

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the

protection of natural persons with regard to the processing of personal data and the

free movement of such data, and repealing Directive 95/46/EC (General Regulation on the

data protection, hereinafter the "GDPR");

Having regard to the law of 3 December 2017 establishing the Data Protection Authority, hereinafter the

ACL;

Having regard to the internal regulations as approved by the House of Representatives on

December 20, 2018 and published in the Belgian Official Gazette on January 15, 2019;

Considering the documents in the file;

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made the following decision regarding:

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the plaintiff: Mr. X

the defendant: Mr Y

1. Facts and procedure

1. On March 18, 2019, the complainant filed a complaint with the Data Protection Authority

(hereinafter the DPA) against the defendant.

The subject of the complaint concerns the online publication of images on YouTube showing the dwelling,

more precisely the chimney of neighbors who use a wood fire, with indication of the name and

the address of the occupant of the accommodation in question.

2. On March 28, 2019, the complaint was declared admissible on the basis of Articles 58 and 60 of the LCA, the

complainant is notified under Article 61 of the LCA and the complaint is forwarded to the Chamber

Litigation under article 62, § 1 of the LCA.

3. On April 17, 2019, the Litigation Division decides, pursuant to Article 95, § 1, 1° and Article 98

of the ACL, that the case can be dealt with on the merits.

4. On April 18, 2019, the parties concerned are informed by registered letter of the provisions

as set out in article 95, § 2 as well as in article 98 of the LCA. Pursuant to Section 99

of the ACL, the parties concerned were also informed of the deadlines for submitting their

conclusions. The deadline for receiving the submissions in reply has therefore been set for October 7.

2019 for the complainant and November 7, 2019 for the respondent.

5. On April 26, 2019, the Litigation Chamber received from the defendant the communication indicating that he

does not accept the intervention of the Litigation Division and wishes to lodge an appeal

with the Markets Court against the decision of the Litigation Chamber according to which the

dossier can be dealt with on the merits. To this end, he attaches the letter of April 23, 2019, addressed to the

President of the Court of Markets, which reiterates the reasoning for the objection.

The defendant asserts that the Litigation Chamber establishes an agenda of conclusions without filing

of exhibits.

He also indicates that he does not accept being put under pressure by the Front Line Service

with a high fine without having been informed of any substantive complaint.

This would show partiality and the actions would be contrary to the rules of order

domestic ODA.

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The defendant also mentions that the plaintiff filed a complaint with the Public Prosecutor

of […] for the same facts. The defendant therefore asks to combine the two

files and have them processed by the court of […].

Furthermore, the defendant notifies the Litigation Chamber that he has read the letter

of the Litigation Division of April 18, 2019, he requests a copy of the file (art. 95, § 2, 3°

of the ACL) and agrees to receive all communication relating to the case electronically

(art. 98, 1° of the LCA).

6. On May 10, 2019, the Litigation Chamber received from the Brussels Court of Appeal, on the one hand, the

service of the request concerning Y v/DATA PROTECTION AUTHORITY, filed

at the Registry of the Court, and on the other hand the request to send the file of the procedure, in accordance

in article 723 of the Judicial Code.

7. On May 15, 2019, following the request to send the file of the procedure, the documents are sent

at the court.

8. On May 20, 2019, the registry of the Brussels Court of Appeal notifies the Litigation Chamber that

the matter scheduled for hearing on May 15, 2019 was adjourned to May 22, 2019 to settle the

timetable for submissions and the date for the pleadings.

9. On May 21, 2019, a copy of the file is sent to the defendant. In it, the defendant is

also informed of the fact that a decision of the Litigation Chamber is enforceable by

provision and that the procedure before the Litigation Division is therefore continuing.

10. On May 24, 2019, the Respondent informed the Litigation Chamber of the receipt of the exhibits and

reiterates its opposition to the continuation of the procedure before the Litigation Chamber.

11. After exchange of various documents, the registry of the Brussels Court of Appeal informs the Chamber
Contentious by e-mail of May 27, 2019 that the case registered for the hearing of May 22, 2019 was
adjourned to May 29, 2019 in order to set the deadlines for conclusions. The Litigation Chamber receives
also this message by regular mail on June 5, 2019.
12. On May 28, 2019, the Respondent transmitted to the Litigation Chamber the conclusions he had drawn up
in the context of its appeal to the Court of Markets. The elements of his appeal
can be summed up as follows:
The fact of filming the smoke with mention of personal data is necessary for the
safeguarding the vital interests of the data subject or of another natural person.
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The defendant refers to this effect to Article 6.1. d) and e) GDPR and Article 8 of the Convention
European human rights.
According to the defendant, the DPA requests the removal of a "video recording" without providing the
slightest proof of the publication of personal data. Furthermore, the
Respondent argues that in its request for information sent to the DPA on 20 December
2018, the plaintiff mentions the URL of only one video recording, while three
recordings have been made of smoke emissions from the wood stove
of the complainant. The Respondent asserts in this respect that it cannot clearly know what
record he should withdraw. The DPA would not have given him any details in this regard.
Based on an internal email exchange between two APD staff members, the
defendant considers that it can be said that:
at)
on February 21, 2019, no violation was observed;
b)
the APD would be a front-line service that cannot take any other action;

the Front Line Service would have advised the complainant to file a complaint

formal;

(c) apparently we would have liked to avoid transferring the file to the inspection.

13. On May 29, 2019, an introductory hearing took place at the Market Court. Protection Authority

data is not present at this hearing.

14. On June 12, 2019, the Market Court delivered its judgment.

Judgment1 broadly includes the following points of attention concerning the evaluation

of the subject of the request:

 Requirement of impartiality of the APD Litigation Chamber

The Markets Court finds that the complaint was lodged on the basis of opinions sent to the

complainant by the APD's Front Line Service. There is therefore no spontaneous complaint, the

complaint was lodged following an opinion issued on this subject by the DPA.

The Markets Court also notes that the complainant was informed by the DPA of the fact that

the publication of a video (with mention of the name and address of the person who commits

violation of emissions laws) was not in itself a violation of

privacy legislation but that "such publication […] [seems] only

can be done with consent".

Then, the Market Court points out that there is a "contact" e-mail address at the DPA

through which contacts are established with people who believe they may have suffered

1 The full text of the judgment is available on the website of the Data Protection Authority, at the following address:

https://www.autoriteprotectiondonnees.be/publications/arret-du-12-juin-2019-de-la-cour-des-marches-available-en-

dutch.pdf.

damage and where an employee of the APD's Front Line Service asks

proactively complete a complaint form. This leads the Market Court to

affirm that the situation in which, on the one hand, certain members of the staff of the APD

give advice and exchange e-mails with people who believe they are suffering

prejudice and on the other hand, that these same members of staff may then act, in

the same case, as an adviser to the Litigation Chamber of the APD or in a

other quality, may be subject to criticism and sanctions.

 Concrete point of view of the DPA on the substance, in the absence of complaint and without having heard

the parts

The Market Court says that the DPA has already taken a concrete view on the substance

that the letter of 31 January 2019 states the following: "the ODA therefore awaits the withdrawal of

the video as such". In a summons addressed to the defendant, the DPA requested

"one more time the removal of the video" and also indicated that she could

itself sanction infringements "by fines which may reach an amount

high in certain cases". The Markets Court also refers to an opinion of a "consultant in

data protection checks" of the DPA to forward the file to the Chamber

Litigation of the DPA and to "compel [the defendant] to put an end to it".

This leads the Markets Court to conclude that the substantive positions taken by

the DPA (where one of its bodies, namely the Litigation Chamber, will have to rule later

as an administrative judge on whether or not an alleged violation is proven)

do not demonstrate prima facie respect for all the rights of the defense (including the

presumption of innocence) opposed to any appearance of partiality or prejudice.

 Decision of the Litigation Chamber according to which the case can be dealt with on the merits

With regard to the decision of the Litigation Chamber according to which the file can be

Treaty on the merits and the schedule of conclusions that it has set in this regard, the Court of

markets affirms that the fact of declaring a complaint admissible does not prejudge its evaluation.

The fact that the file can be processed in substance is subject to a strict control of formalism,

where the Litigation Chamber wishes to process the complaint without first carrying out a

investigation by the Inspection Service, in accordance with article 94, 3° of the LCA. The Court of

markets adds that a calendar of conclusions in which each party has approximately□

one month and where the defendant obtains the last deadline is in accordance with the rules of rights□

of the defense.□

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□ Complaint to the Public Ministry of [...] about the same facts□

With regard to the complaint which was lodged with the Public Ministry of [...], the Court□

of the markets invokes the general principle according to which the criminal holds the civil in state and poses□

whether there may (still) be grounds for the DPA to pursue a "sanction"□

of the citizen when a criminal investigation is (apparently) already underway regarding the same□

facts. The Court refers to Articles 95, § 3 and 100, § 2 of the LCA2 which allow one to suppose□

that the LCA is no exception to this principle.□

2 Art. 95. § 1. The Litigation Chamber decides on the follow-up it gives to the file and has the power to:□

1° decide that the file can be dealt with on the merits;□

2° propose a transaction;□

3° dismiss the complaint without action;□

4° issue warnings;□

5° to order compliance with requests from the data subject to exercise these rights;□

6° to order that the person concerned be informed of the security problem;□

7° to send the file to the prosecutor's office of the King of Brussels, who informs him of the follow-up given to the file;□

8° to decide on a case-by-case basis to publish its decisions on the website of the Data Protection Authority.□

§ 2. In the cases mentioned in § 1, 4° to 6°, it shall immediately inform the parties concerned by registered mail:□

1° the fact that a case is pending;□

2° the content of the complaint, where applicable, with the exception of documents enabling the identity of the complainant to b

3° that the file can be consulted and copied to the secretariat of the litigation chamber, where applicable, with the exception of t

allowing to know the identity of the complainant, as well as the days and hours of consultation.□

§ 3. When, after application of § 1, 7°, the public prosecutor waives the right to initiate criminal proceedings, to propose a□

amicable resolution or penal mediation within the meaning of article 216ter of the Code of Criminal Procedure, or when the minis

public has not made a decision for a period of six months from the date of receipt of the file, the Protection Authority

data determines whether the administrative procedure should be resumed.

Art. 100. § 1. The Litigation Chamber has the power to:

1° dismiss the complaint without follow-up;

2° order the dismissal;

3° pronouncing the suspension of the pronouncement;

4° to propose a transaction;

5° issue warnings and reprimands;

6° order to comply with requests from the data subject to exercise his or her rights;

7° order that the person concerned be informed of the security problem;

8° order the freezing, limitation or temporary or permanent prohibition of processing;

9° order compliance of the processing;

10° order the rectification, restriction or erasure of the data and the notification thereof to the recipients of the

data;

11° order the withdrawal of accreditation from certification bodies;

12° to issue periodic penalty payments;

13° to issue administrative fines;

14° order the suspension of cross-border data flows to another State or an international body;

15° forward the file to the public prosecutor's office in Brussels, who informs it of the follow-up given to the file;

16° decide on a case-by-case basis to publish its decisions on the website of the Data Protection Authority.

§ 2. When, after application of § 1, 15°, the public prosecutor waives the right to initiate criminal proceedings, to propose a

amicable resolution or penal mediation within the meaning of article 216ter of the Code of Criminal Procedure, or when the minis

public has not made a decision for a period of six months from the date of receipt of the file, the Protection Authority

data determines whether the administrative procedure should be resumed.

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□ Schedule of conclusions without prior filing of exhibits□

It follows from Article 98 of the LCA that when the Litigation Chamber decides that the file□

may be examined on the merits, it shall immediately inform the parties concerned by sending□

recommended provisions as set out in Article 95, § 2 of the LCA. The Court of□

contracts confirms that this legal provision does not require that evidence must be□

attached.□

□ Threat of the citizen as to the possibility of sanction by high fines□

The Court of Markets affirms that, even if there is a threat which is addressed to the citizen□

announcing the possibility of being condemned by the DPA to pay heavy fines, the latter□

is not contrary to any legal provision, but by its general attitude, the DPA gives□

at least the impression that it will not act impartially.□

□ Right to make public a video recording□

The reasons invoked by the defendant, with reference to articles 6.1. d) and e) of the GDPR 3which□

would grant the right to make the video recordings public, are not up for debate given that□

given that the Court of Markets was not seized for an appeal against a "decision" as to□

at the bottom of the Litigation Chamber.□

The Markets Court decides that new deadlines for conclusions must be defined, where□

the first deadline for Mr. Y expires at the earliest on the last day of the month that begins□

after the parties to the case have had knowledge of this judgment.□

15. Following the judgment, the Litigation Chamber decided on June 26, 2019 to define new deadlines for□

conclusions.□

16. On August 22, 2019, this decision was reviewed at the Respondent's request. The parties are informed□

the following deadlines for submissions:□

□□

the deadline for receipt of the defendant's submissions in response is fixed at□

September 5, 2019;□

□□

the deadline for receipt of the complainant's submissions in reply is set at□

October 5, 2019;□

3 At point 4.7. of the judgment, the Market Court mentions article 6, d) and article 6, e) of the APD law, but it should be read□

section 6.1. d) and section 6.1. e) GDPR.□

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□□

the deadline for receipt of the defendant's submissions in reply is set at□

November 4, 2019.□

17. On August 28, 2019, the Litigation Chamber received the submissions in response from the□

respondent, which takes up the same elements as those put forward in its submissions in the□

proceedings before the Court of Markets (as summarized above) and supplements them with the□

following elements:□

□□

the complaint mentions three APD staff members allegedly involved in the review□

given to the complainant;□

□ in addition to the publication of video images with data identifying the complainant, the complaint□

declared admissible by the First Line Service also mentions a fake Facebook profile□

which the defendant allegedly used to propagate slanderous remarks. The defendant asserts□

that no evidence is provided in this regard. Since the complaint is declared admissible by□

letter from the Front Line Service, the defendant considers that the signatories of this letter□

support an offense under Article 66 of the Penal Code;□

□□

the file would not contain any evidence, so that the defendant considers it appropriate□

to order a dismissal, pursuant to Article 100, § 1, 2° of the LCA;□

□□

the absence of mediation, notwithstanding the possibility and the obligation of the DPA to carry out a□

mediation and to issue a constructive opinion;□

□□

the absence of granting by registered mail of a final deadline for the introduction of□

submissions in reply by the defendant, in the schedule of submissions as defined after□

the judgment of the Market Court. This has been rectified, but the defendant claims that this testifies□

the fact that the Litigation Chamber will not act impartially;□

□□

the defendant seeks damages which he assesses as a flat rate of 25,000 EUR.□

18. On October 1, 2019, the Litigation Chamber receives the submissions in reply from the□

complainant. The complainant indicates that the complaint relates only to the unauthorized use□

of his name and the name of his company "…" on YouTube videos and their publication on□

the website www.z.[...]. The YouTube videos in question have since been deleted. The complainant□

assumes that this deletion probably results from his own request to the authorities of□

YouTube and requests from others who felt that this way of□

publishing was inappropriate. The complainant claims that at the end of August 2019, the section ".." on the site□

www.z.[...] can only be opened if one is affiliated in order to prevent a third party not□

affiliate can still verify it. This would be the only section that is private.□

19. On November 4, 2019, the Litigation Chamber receives the submissions in reply from the□

respondent. The submissions in reply reproduce the full submissions in response□

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introduced on August 28, 2019. The Respondent adds only that he received the submissions in□

Complainant's reply dated October 1, 2019, confirming that the YouTube videos have□

withdrawn by the complainant's own intervention. Respondent refers to written questions□

repeated comments he has addressed to the DPA on this subject. The defendant thus indicated to the DPA that three□

video recordings were no longer online since 01/15/2019 and potentially much more□

early. The Respondent also indicates that it asked the DPA for clarification regarding the

deleted video recordings, especially to find out who is behind the

deletion of these recordings, but that the DPA did not follow up.

20. On November 20, 2019, the Litigation Chamber contacted the Public Prosecutor's Office [...]

in order to know the current status of the situation with regard to the file that is being handled by the

Public Prosecutor's Office in order to be able to determine the possibilities available to the Litigation Chamber

to take corrective action if necessary. The Litigation Chamber refers to

this respect in article 229, § 2 of the law of July 30, 2018 on the protection of persons

with regard to the processing of personal data, which provides the following:

"Art. 229. § 1 […]

§ 2. In the absence of a protocol and for the offenses referred to in Articles 222 and 223, the public prosecutor

King has a period of two months from the date of receipt of the original of the trial-

verbally, to communicate to the competent supervisory authority that information or

investigation has been opened or proceedings have been initiated. This communication extinguishes the

possibility for the supervisory authority to exercise its corrective powers.

The competent supervisory authority may not impose a sanction before the expiry of this period.

In the absence of communication from the Public Prosecutor within two months, the facts cannot

only be sanctioned administratively."

21. On January 30, 2020, the Litigation Chamber recalled its letter of November 20, 2019 to the

Prosecutor's Office of the King of [...]. On the same date, the parties are informed of the letter

sent to the Public Prosecutor's Office to inform them about the processing of the file.

22. Also on 30 January 2020, the Complainant indicates that he received the communication from the Chamber

Litigation concerning the mail sent to the Public Prosecutor's Office. It also indicates that the defendant has

in the meantime deleted the videos in question which contain the personal mentions.

23. On April 24, 2020, the Public Prosecutor's Office informed that the facts were not punishable because they did not constitute

not an offense and as such, it was decided to close the file without further action.

24. On June 19, 2020, the Respondent reacted to the communication from the Litigation Chamber regarding the
mail to the Public Prosecutor's Office. According to the defendant, file X would be examined by an investigating judge.
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The defendant also insists that the Litigation Chamber analyze the file
objectively taking into account the remarks of the Court of Markets, and that it carries out a screening
on the possession and use of wood-burning stoves with all staff members of
ODA by ensuring that users of wood-burning stoves abstain.
25. On October 9, 2020, the parties are informed that pursuant to Article 52 of the rules of order
interior, a hearing will take place on October 26, 2020.
26. On October 26, 2020, the parties are heard by the Litigation Chamber. Although duly
summoned, the defendant did not appear. During the hearing, the complainant explains his complaint.
In this regard, no other element than those forming part of the file is provided. After that, the
debates are closed.
27. On October 27, 2020, the minutes of the hearing are sent to the parties, in accordance with
Article 54 of the internal rules. The Litigation Chamber did not receive any comments
about the minutes.
1. Legal basis
 Personal data
Article 4. 1) GDPR
For the purposes of these rules, the following terms mean:
"1) "personal data": any information relating to a natural person
identified or identifiable (hereinafter referred to as "data subject"); is deemed to be a "person
identifiable natural" means a natural person who can be identified, directly or indirectly,
in particular by reference to an identifier, such as a name, an identification number,
location, an online identifier, or to one or more specific elements specific to its identity
physical, physiological, genetic, psychic, economic, cultural or social").

[…]

 Lawfulness of processing

Article 6.1 GDPR

1. Processing is only lawful if and insofar as at least one of the following conditions is

filled:

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a) the data subject has consented to the processing of his or her personal data for one or

several specific purposes;

b) the processing is necessary for the performance of a contract to which the data subject is party or

the execution of pre-contractual measures taken at the latter's request;

c) processing is necessary for compliance with a legal obligation to which the data controller

treatment is submitted;

d) processing is necessary to protect the vital interests of the data subject or of a

other natural person;

e) the processing is necessary for the performance of a task carried out in the public interest or relating to the exercise of

the public authority vested in the controller;

f) the processing is necessary for the purposes of the legitimate interests pursued by the data controller

processing or by a third party, unless the interests or fundamental rights and freedoms prevail

of the data subject who require protection of personal data, in particular

when the data subject is a child. Point (f) of the first paragraph does not apply to

processing carried out by public authorities in the performance of their tasks.

2. Motivation

a) Procedure

Preliminary remark

28. This case follows the first judgment of the Cour des marchés in a case against the Autorité

of data protection (APD), issued very shortly after the entry into office of the

members of this authority and at a time when the procedures for the Litigation Chamber and –

moreover – the cooperation between the DPA and the Market Court still needed to be developed.

This is particularly reflected in the following circumstances:

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Respondent's factual objections to internal DPA proceedings predate

to a reorganization in which the tasks of the various ODA bodies have been

been defined at the organizational level.

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The appeal to the Court of Markets brought by the defendant concerns a decision

intermediary of the Litigation Chamber to deal with a case on the merits. Meanwhile,

the Litigation Chamber has developed a practice in which it starts from the

principle that such an intermediate decision (where it is decided to deal with the case on the merits)

constitutes only one stage of the procedure, against which no appeal is available.

possible principle.

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The absence of the DPA during the introductory hearing of 29 May 2019 is explained by the fact that it

it was the first time that an appeal was brought against the APD (Litigation Chamber)

with the Court of Markets and that the cooperation only had to be put in place.

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29. In the meantime, the Market Court found that the Litigation Chamber was an authority

administrative and not a judicial body, the Litigation Chamber has itself drawn up

procedures and it has developed the essence of its function (in particular in its decision 17/20204 and

in ODA strategic documents5).

Defendant's point of view and position of the Litigation Chamber

30. The Respondent advances several arguments suggesting that the proceedings would present

several shortcomings, in particular at the level of the requirement of impartiality of ODA on the one hand and on the other

out of respect for the right of defence.

 Mediation procedure

31. First of all, the Respondent argues that the method of processing the file by the Service de Première

Line does not show impartiality. The Respondent correctly points out that upon receipt

of a request, the mission of the Front Line Service consists first of all in organizing a

mediation. Since the complainant did not lodge a complaint initially, but only

sent a request to the APD via the central e-mail address contact@apd-gba.be from

from which all e-mails addressed to the DPA during a first contact (all communications

which follow with the Front Line Service are done via this same e-mail address) are

redirected to the competent APD service, the request was forwarded to the Service de Première

Line. It is above all the responsibility of the Front Line Service to evaluate, on the basis of article 606 of

the ACL, if the request is admissible to proceed next, with regard to requests

admissible, to their processing under Article 627, § 2, first paragraph of the LCA.

4 Decision on the merits 17/2020 of 28 April 2020

5 Strategic Plan 2020-2025 and Management Plan 2020

6 Article 60. The first-line service examines whether the complaint or request is admissible.

A complaint is admissible when it:

- is written in one of the national languages;

- contains a statement of the facts and the information necessary to identify the processing to which it relates;

- falls under the jurisdiction of the Data Protection Authority.

A request is admissible when it:

- is written in one of the national languages;

- falls under the jurisdiction of the Data Protection Authority.

The first-line service may invite the complainant or requester to clarify their complaint or request.

7 Article 62 § 1. Admissible complaints are forwarded by the first-line service to the litigation chamber.

"(…) admissible requests are processed by the first-line service.

If through the intervention of the first line service an amicable agreement is found between the parties, the first line service draws up a report in which he sets out the solution found as well as its compliance with the legal principles in terms of Data protection.

An amicable agreement does not exclude the supervisory competence of the Data Protection Authority.

If no amicable agreement can be reached, the initial request for mediation takes the form of a complaint which can then be forwarded by the first-line service to the litigation chamber for substantive processing, subject to:

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32. It is clear from the documents in the file that the Service de Première Ligne made use of its competence to launch a mediation procedure (article 228, § 1, 2° of the LCA) because it contacted the defendant. Prior to the mediation, the Front Line Service informed the applicant that the respondent would be contacted by the DPA regarding the issue. The applicant (now the complainant) did not object. During the mediation process, the petitioner (complainant) has further confirmed that he wishes mediation as the February 18, 2019, he had reported to the Front Line Service that the defendant still maintained publication on the website www.z.[...] and that he expressly asked the defendant to stop this practice. And the applicant (complainant) adds that a constructive dialogue with the defendant is manifestly impossible.

33. Through correspondence sent by the Front Line Service to the two parties concerned, this service has attempted to fulfill the role of mediation provided for in Articles 22, § 1, 2° and 62, § 2, second paragraph of the ACL, by contacting the defendant and asking him to delete the video in question – of which the applicant (now the complainant) had attached in his application the link to the website – as well as the related identification data. Since the defendant did not respond to the repeated request of the Service de Première Ligne, this service did not could only see that no amicable agreement was possible. In such a case, article 62, § 2, fourth paragraph of the LCA provides that the initial request for mediation takes the form of a complaint which can then be transmitted by the First Line Service to the Litigation Chamber

for substantive treatment with the consent of the applicant or finding of serious indications of

the existence of a practice likely to give rise to an infringement of the fundamental principles

the protection of personal data, within the framework of this law and the laws

containing provisions relating to the protection of the processing of personal data

staff. With this in mind, the Front Line Service addressed to the defendant in its

last letter9 a warning that in the absence of any positive follow-up, the procedure before the

Litigation Chamber could be launched, the latter having the possibility of

1° consent of the applicant; Where

2° observation, by the first-line service, of serious indications of the existence of a practice likely to give rise to a

infringement of the fundamental principles of the protection of personal data, within the framework of this law and

laws containing provisions relating to the protection of the processing of personal data.

8 Article 22 § 1. Front line service:

1° receives complaints and requests addressed to the Data Protection Authority;

2° can initiate a mediation procedure;

3° promotes data protection to the public, paying specific attention to minors;

4° promotes awareness of their obligations among data controllers and subcontractors;

5° provides information relating to the exercise of their rights to data subjects.

Frontline service is headed by the Frontline Service Manager.

9 Respondent's letter to the APD Front Line Service, July 14, 2019.

penalize violations of the GDPR with fines. The Front Line Service has

also addressed to the plaintiff under Article 62, § 2, fourth paragraph, 1° of the LCA 10 in order to

that with his agreement, the request for mediation be treated as a complaint by the Chamber

Litigation. Admittedly, the Front Line Service did not content itself with asking for the consent of the

applicant (i.e. "the complainant" in the subsequent phase of the procedure) as provided for in the

law, but informed him of the possibility of filing a formal complaint if he so wished. By virtue of

Article 62, § 2, fourth paragraph, 1° of the LCA, the Front Line Service could have contented itself

to ask only the agreement of the applicant to transmit his file to the Chamber

Litigation for substantive treatment.

34. This communication to the applicant (now the complainant) was made pursuant to Article 62,

§ 2, fourth paragraph, 1° of the LCA and can therefore in no way be considered as an opinion

emanating from the Front Line Service nor as a "proactive" request from this service of

complete a complaint form, nor as an assistance of this service for the benefit of the complainant

which the Respondent thinks it can infer constitutes a manifestation of bias in the

how ODA works. In this regard, the Litigation Chamber further points out in a manner

more general that neither the GDPR nor the LCA precludes an active role of the Front Line Service

in contacts with citizens and organisations. It only notes that in the case

in question, no interference in the proceedings was found.

The work of the Litigation Chamber

35. In the absence of an amicable agreement and the fact that the applicant has completed the complaint form, he has

given authorisation, pursuant to Article 62, § 2, fourth paragraph, 1° of the LCA, to process

the case by the Litigation Chamber. The Litigation Division was thus seized under

article 9211, 1° of the LCA. This referral to the Litigation Chamber has the consequence that the

Litigation Chamber has the possibility, pursuant to article 9412 of the LCA, to

have recourse to the intervention of the Inspection Service. The Litigation Chamber has in this regard

10 Letter from the Front Line Service to the complainant dated February 27, 2019.

11 Article 92 The litigation chamber may be seized by:

1° the first-line service, in accordance with Article 62, § 1, for the handling of a complaint;

2° a party concerned who lodges an appeal against measures of the inspection service, in accordance with Articles 71 and

90;

3° the inspection service, after closing an investigation in accordance with Article 91 § 2.

12 Art. 94. Once seized, the contentious chamber can:□

1° request an investigation from the inspection service in accordance with Article 63, 2°;□

2° ask the inspection service to carry out an additional investigation when the litigation chamber is seized□

in accordance with article 92, 3°;□

3° to deal with the complaint without having seized the initiative inspection service.□

full strategic freedom to decide whether or not to use the Inspection Service.□

In general, the Litigation Division follows the following line of conduct: the Service□

of Inspection is involved if the facts cannot be sufficiently established without investigative acts□

(article 58.1 of the GDPR and articles 64 to 90 inclusive of the LCA).□

36. In this case, the Litigation Division proceeded, directly after the complaint, to□

processing of it without seizing the Inspection Service (article 94, 3° of the LCA) and decided that□

the case could be dealt with on the merits (article 95, § 1, 1° of the LCA). The Litigation Chamber□

did not consider it necessary to request an investigation from the Inspection Service because the facts□

could be established using the documents already part of the file. It belongs to the House□

Litigation to judge whether an investigation by the Inspection Service is necessary in a file□

specific."□

□ Evidence□

37. Contrary to what the Respondent claims, the file did already contain proof of the□

publication of images with the complainant's name and address. Not only did the complainant□

mentioned the YouTube link in question in his request of December 20, 2018, but in addition the□

defendant himself admitted to the Frontline Service on January 31, 2019 the treatment of□

data of the complainant, as follows:□

"The data of the person concerned have been included in a published record of□

air pollution on the public domain, the publication is equivalent to a press article.□

We have had a reaction from the person concerned, which has been published on the website of z"□

[All passages quoted in this decision have been freely translated by the Secretariat

General of the Data Protection Authority, in the absence of an official translation].

38. On February 18, 2019, the defendant himself mentions three YouTube links concerning the

complainant, whose link mentioned by the complainant in his initial request about the same link,

as well as two other YouTube links and adds: "In 2017, we had already published its pollution

on Youtube, […]".

39. These documents form an integral part of the file as submitted to the Litigation Division, given

the application of article 62, § 2, fourth paragraph of the LCA as explained above, the

First Line then forwarding the complaint to the Litigation Chamber in application of

Article 62, § 1 of the LCA, which is thus seized under Article 92, 1° of the LCA.

40. During the proceedings before the Litigation Division, the Respondent mentions three

video recordings of smoke emissions caused by the defendant and declares that in the

Decision on the merits 71/71 - 16/26

framework of these video recordings, on which no private or family activity of the complainant

is not visible as such, the data of character has been published

complainant's staff. The facts are thus sufficiently established.

41. On the other hand, with regard to the Complainant's assertion that the Respondent would broadcast

slanderous remarks via a fake Facebook account, the Litigation Chamber follows the

defendant, given that this assertion by the plaintiff is not supported by any document brought

by the complainant.

 Role of the Inspection Service

42. To support the assertion that the DPA would not respect the required impartiality, the Respondent

further refers to an email dated February 21, 2019 between a staff member of the Service de

Front Line and a staff member from the Inspection Service. The Litigation Chamber

notes that this internal e-mail only included the preparation of the letter that the Service of

Front Line addressed the complainant on February 27, 2019. Both the email and the letter confirm

that only the Litigation Chamber has the power to impose a sanction if a

violation is observed. The defendant erroneously claims that one could deduce from this passage

that no infringement was found on February 21, 2019. The e-mail and subsequent letter addressed

to the complainant give explanations as to the competence of the Front Line Service, such as

as established in article 22, § 1 of the LCA.

43. With regard to the Respondent's assertion that it appears from the exchange of e-mails between

the Front Line Service and the Inspection Service that staff members want

manifestly avoid having the file transferred to the Inspection Service, the Chamber

Litigation points out that the Front Line Service is responsible for receiving any complaints

and any request and that it then determines the nature of these complaints and requests and therefore also

their further processing. The Front Line Service has a margin in this respect

assessment which may be influenced by various considerations, such as the seriousness of the

complaint or request. To ensure the proper functioning of the Litigation Chamber and the

Inspection Service, it is the duty of the Front Line Service to ensure that other

services are not overloaded with cases that can be handled at the level of the Service

First Line itself13. The Litigation Chamber finds that the communication between

13 Explanatory memorandum to the bill establishing the Data Protection Authority (DOC 54 2648/001, p. 40):

"The front-line service is responsible for receiving each complaint and each request and then determines the nature of these

complaints and queries. The Front Line Service has a margin of appreciation in this respect which may be influenced by

different considerations, such as the seriousness of the complaint or request. To ensure the proper functioning of the room

litigation and the inspection department, it will be ensured, for example, that they are not overloaded with files that may

be handled at the level of the frontline service itself."

the Front Line Service and the Inspection Service is part of the mission

determined by the Front Line Service not to charge, in this case, the Service

Inspection of a file, to the extent possible.

44. Of course, once seized of the complaint, the Litigation Division is not required to organize
such consultation between the Front Line Service and the Inspection Service and when it
deems necessary for an adequate decision-making, the Litigation Chamber will appeal
to the intervention of the Inspection Service. The Litigation Chamber expressly points out in this
respect that a case can be sent to the Inspection Service by the Litigation Chamber
(in accordance with art. 94, 2° juncto art. 63, 2° of the LCA), but not by the Service de Première
Line. However, nothing prevents informal contact between the Inspection Service and the
First Line for the effective execution of various tasks.

Independence of the Litigation Chamber

45. The Litigation Chamber also emphasizes – moreover – that at no time did an employee of
the Litigation Chamber intervened in the phase prior to the referral to the Chamber
Litigation of the complaint. This is evidenced by the fact that as soon as the Litigation Chamber was seized of
the complaint, all communications with the parties took place via the Registry of the Chamber
Litigation and the e-mail address provided for this purpose: litigationchamber@apd-gba.be. Any
DPA staff member cited by the complainant in the complaint form, and no other
member of the staff of the Front Line Service or the Inspection Service does not work for
the Litigation Chamber. In addition, there is a strict distribution of staff members within
ODA which provides that each member of staff is assigned to only one ODA service.
46. Assignment to a single service does not, however, exclude the possibility in principle that members of the
staff also perform work for another department. It should of course be avoided
that they act with different hats for different services in the same file. The ACL
does not provide that there must be a strict separation between the collaborators of the different
departments which would prevent APD employees from changing departments, as they act
successively for one service and then for another.
47. For the rest, the Litigation Division is entirely free to determine how it

prepares decisions, who is involved in this and which employees prepare a decision.

In addition, the Litigation Chamber emphasizes that the decisions are taken by the members of the Litigation Chamber, as composed under Article 33 of the LCA. Autonomy in the imposition of sanctions is notably guaranteed by the participation of external members in the decision-making of the Litigation Chamber, without prejudice to the competence of the president of

the Litigation Chamber to sit alone.

 Criminal investigation into the same facts

48. Although in his submissions addressed to the Litigation Division, the Respondent does not address further to the fact that the complainant filed a complaint against him on the same facts with the Public Prosecutor of [...], but that he did so before the Court of Markets which, in application of principle "the criminal keeps the civilian in state", raised the question of whether there could (still) be a ground for the DPA to pursue a citizen sanction when a criminal investigation is (apparently) already underway on the same facts, the Litigation Chamber explains the following procedure on this point.

49. The Market Court refers to Articles 95, § 1, 7° of the LCA and 100, § 2 of the LCA by applying the principle "the criminal keeps the civil in state" because these articles provide that when after transfer of the file by the Litigation Chamber to the Public Prosecutor's Office of Brussels, on Public Prosecutor renounces to initiate criminal proceedings, to propose an amicable resolution or penal mediation within the meaning of article 216ter of the Code of Criminal Procedure, or when the public prosecutor has not taken a decision for a period of six months from the day of receipt of the file, the Data Protection Authority determines whether the administrative procedure must be resumed.

50. In the present case, however, the Litigation Chamber did not itself send the Public Prosecutor the case before it. Information that a complaint had been lodged to the Public Ministry for the same facts was announced by the defendant to the Chamber

Litigation. In order to be able to determine what possibilities the Litigation Chamber had

again, in order to take corrective action if necessary, she contacted the

Prosecutor's office of the King of [...] to know what follow-up had been given to the file.

In response, the Public Prosecutor's Office indicated that the facts were not punishable because they

did not constitute an offense and as such, it was decided to close the file without further action.

Then, the Litigation Chamber could resume the administrative procedure.

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 Right of defense

51. Furthermore, the Respondent correctly points out that when determining the new

deadlines for the conclusions following the judgment of the Court of Markets, it was not granted

new deadline allowing it to react to the complainant's submissions in reply, but this was

rectified directly by the Litigation Chamber as soon as it receives the remark in this regard.

And it is precisely because of the importance that the Litigation Chamber attaches to respect

of the right of defense that it decided ex officio to hear the parties concerned.

52. The Litigation Division emphasizes that impartial and fair treatment must be ensured throughout

of the course. The problem raised by the Respondent concerns the preliminary phase, but the rights

of the defense were not violated, because the defendant had the opportunity to put forward his argument

in its entirety by means of its pleadings in response and its pleadings in reply and

he was also able to fully exercise his right to contradict during the hearing of the Chamber

Litigation.

b) Personal data

53. First of all, the Litigation Division considers it necessary to specify what the processing consists of

of personal data in this file. In the conclusions drawn up by the defendant

in the context of the procedure before the Court of Markets, he argues that the DPA is requesting the

deletion of a "video recording" without providing any useful evidence indicating the

publication of personal data. The respondent thus refers to the letter of January 31

2019 that he received on this subject from the Front Line Service. At that time he was not yet

question of any formal complaint, so that the DPA responded to the request under

of article 62, § 2 of the LCA which provides that admissible requests are processed by the Service

of Front Line.

54. In the letter in question, the Service de Première Ligne expressly stated the following:

"A photo/video of a chimney does not in principle come under the legislation relating to the protection

of privacy. In your case, however, you add a name and address to the video, so

that it is indeed a question of processing personal data within the meaning of the GDPR.

This stipulates that processing is only possible in "a few cases described in a manner

limited" (Article 6, paragraph 1 of the GDPR).

In your case, this seems to only be possible through consent."

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55. In the judgment of June 12, 2019, the Court of Markets considers that it can affirm that by this letter,

the APD allegedly claimed that the publication of a video (with mention of the name and address of the

person who violates emissions legislation) does not in itself constitute a violation

of privacy legislation but that "such publication […] [seems]

can only be done through consent".

56. The Litigation Division wishes to clarify any possible confusion in this regard. The letter in

question mentions that posting a photo/video of a fireplace as such

does not involve any processing of personal data to which the legislation would apply

relating to the protection of privacy, but that it is on the other hand a question of a processing of

personal data when the video is published with the name and address of the

person concerned and that such publication can only be done in this case with a

consent.

57. This letter must be considered in the light of the definition of the notion of personal data

personnel in Article 4, 1) of the GDPR, as explained in Recital 26 of the GDPR, Opinion 4/2007 of the

Data Protection Group14 and case law of the Court of Justice of the EU15. Bedroom

Litigation specifies that although the notion of personal data must be understood

in the broad sense and that by this is meant any data by means of which a natural person

is identifiable, a video recording relating only to a chimney from which the

smoked without permitting the identification of a person in any way does not constitute

personal data. This video recording of the chimney, on the other hand, becomes

personal data as soon as the identification data of the natural person

are mentioned there.

58. In its submissions in response and in reply to the Litigation Division, the Respondent asserts

that the published video recordings do not show any private and family activity of the complainant,

nor neighbors, so that there would be no question of any personal data.

The publication of personal data in the event of sources of fire smoke emissions

of wood may, however, according to the defendant, allow neighbors to determine the origin of

the nuisance caused and, if necessary, to become a civil party.

14 Article 29 Data Protection Working Party Opinion 4/2007 on the concept of personal data,

adopted on June 20, 2007: https://cnpd.public.lu/dam-assets/fr/publications/groupe-art29/wp136_fr.pdf.

15 Notably the judgments Nowak (CJEU, 20 December 2017, C 434/16, ECLI:EU:C:2017:994) and Breyer (CUJE, 19 October

C-582/14, ECLI: EU: C:2016:779).

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59. The Litigation Chamber finds that the publication as a whole, namely the video with

name and address of the complainant, constitutes processing of personal data at the

meaning of Article 4, 1) of the GDPR, in the context of which the principles of data protection

should apply to any data relating to an identified or identifiable natural person16.

The publication of the video recording is not dissociated from the complainant's name and address.

The video recording as well as the name and address of the complainant are published precisely in

the purpose of being able to carry out an identification. The defendant explicitly acknowledges this because

that he himself indicates that he wants to allow third parties to determine who is causing the nuisance

due to the fumes to then constitute, if necessary, a civil party against this

anybody.

c) Lawfulness of processing

60. Processing of personal data is only lawful if there is a legal basis

for this purpose. To prove the legality of the publication of the video with the name and address of the

Complainant, the Respondent relies on Article 6.1.d) of the GDPR (the processing is necessary for the

safeguarding the vital interests of the data subject or of another natural person) and

on Article 6.1.e) of the GDPR (processing is necessary for the performance of a task in the public interest

or falling within the exercise of official authority vested in the controller).

61. The Litigation Division examines to what extent these legal bases can be

invoked by the defendant in order to justify the processing of personal data which

relate to the complainant.

62. With regard to the legal basis which allows the processing of personal data

personal if the processing is necessary to safeguard the vital interests of the person

concerned or another natural person (article 6.1.d) of the GDPR), the Litigation Chamber

emphasizes that safeguarding an interest which is essential to the life of the data subject or

of another natural person must take precedence. In this case, the defendant does not allege that the

16 Recital 26 GDPR: Data protection principles should apply to any information about

an identified or identifiable natural person. Personal data that has been pseudonymised

and which could be attributed to a natural person through the use of additional information should be

considered to be information relating to an identifiable natural person. To determine whether a natural person

is identifiable, consideration should be given to all the means reasonably likely to be used by

the controller or by any other person to identify the natural person directly or indirectly,

such as targeting. To establish whether means are reasonably likely to be used to identify a person

physical, all objective factors should be considered, such as the cost of identification and the time

necessary for it, taking into account the technologies available at the time of processing and their evolution. He
there is therefore no reason to apply the principles relating to data protection to anonymous information, namely
information that does not relate to an identified or identifiable natural person, nor to the personal data provided
anonymous in such a way that the person concerned is not or no longer identifiable. » This regulation does not apply
therefore not to the processing of such anonymous information, including for statistical or research purposes.
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publication of data relating to the complainant would be important for the life of the complainant himself,
but on the other hand for the protection of third parties, namely the neighbours. The defendant asserts that
its intention is to protect an interest which is essential to the lives of other natural persons, to
namely the protection of the health of neighbours, the seriousness of the nuisance caused by the emissions of
smoke being demonstrated by means of the publication of a video with the name and address of the
complainant. In this respect, recital 46 of the GDPR provides that the processing of data to
personal character based on the vital interest of another natural person should in principle
only take place where the processing clearly cannot be based on another basis
legal.17
63. Consequently, the Litigation Division examines whether another legal basis may possibly
be invoked, allowing the defendant to proceed with the publication of the video with the name and
the complainant's address.
64. The Litigation Chamber notes that the defendant also invokes Article 6.1.e) of the GDPR.
According to the defendant, the publication is necessary for the execution of a mission of public interest or
relating to the exercise of official authority vested in the controller. In this
which specifically concerns the legal basis mentioned in Article 6.1.e) of the GDPR, the
Litigation Chamber points out that Article 6.3. of the GDPR18 specifies that this basis
legal must be defined by Union law or by the law of the Member State to which the
controller is submitted. The purpose of the processing must be defined on this basis
legal or, with regard to the processing referred to in paragraph 6.1, point e), it must be

necessary for the performance of a task in the public interest or in the exercise of authority

public authority vested in the controller.

65. The Respondent does not mention any basis which would be included in the national legislation,

allowing the processing of the data that is the subject of the complaint. Insofar as

17 See also Kuner-book, pp. 333-334.

18 3. The basis for the processing referred to in paragraph 1, points c) and e), is defined by:

a) Union law; Where

(b) the law of the Member State to which the controller is subject.

The purposes of the processing are defined in this legal basis or, with regard to the processing referred to in paragraph 1,

point (e), are necessary for the performance of a task carried out in the public interest or in the exercise of official authority

invested the controller. This legal basis may contain specific provisions to adapt the application

of the rules of this Regulation, among others: the general conditions governing the lawfulness of the processing by the person re

processing; the types of data that are subject to processing; the people concerned; the entities to which the data to

personal character can be communicated and the purposes for which they can be communicated; purpose limitation;

retention periods; and processing operations and procedures, including measures to ensure processing

lawful and fair, such as those provided for in other specific processing situations as provided for in Chapter IX.

The law of the Union or the law of the Member States meets an objective of public interest and is proportionate to the legitimate

for follow-up.

Decision on the merits 71/71 - 23/26

the defendant refers to Article 8 of the ECHR to justify the fact that he could carry out the

publication in question, the Litigation Chamber also points out that this article

also authorizes interference with the exercise of the right to respect for private life only to the extent

that such interference is prescribed by law. On this point also, the Respondent does not invoke any

legal provision making it possible to comply with this requirement of Article 8 of the ECHR and granting it

the right to publish the complainant's personal dataset.

66. Given that it does not appear from the Respondent's arguments that it relies on any

legal basis defined by Union law or by the law of the Member State, which would grant it

the right to proceed with the publication of the video with the name and address of the complainant within the framework

of the general interest, the Litigation Chamber considers that the defendant cannot invoke

Article 6.1.e) of the GDPR to qualify the publication in question as lawful.

67. Although the Respondent does not mention any legitimate interest (Article 6.1.f) of the GDPR), the Chamber

Contentious examines, for the sake of completeness, whether the processing of data could be based on

this interest.

68. In accordance with Article 6.1.f) of the GDPR and the case law of the Court of Justice of the European Union

European Union (hereinafter "the Court"), three cumulative conditions must be met for a

responsible for the processing can validly invoke this basis of lawfulness, "namely,

firstly, the pursuit of a legitimate interest by the controller or by the

third parties to whom the data are communicated, secondly, the necessity of the processing of the

personal data for the fulfillment of the legitimate interest pursued and, thirdly,

the condition that the fundamental rights and freedoms of the person concerned by the protection

data do not prevail" (judgment "Rigas"19).

In other words, in order to be able to invoke the basis of lawfulness of "legitimate interest"

in accordance with Article 6.1.f) of the GDPR, the controller must demonstrate that:

1)

the interests it pursues with the processing can be recognized as legitimate (the "test

purpose");

2)

the intended processing is necessary to achieve those interests (the “necessity test”); and

3)

the weighing of these interests against the interests, freedoms and fundamental rights of

data subjects weighs in favor of the controller (the "weighting test").

69. With regard to the first condition (the so-called "finality test"), the Chamber

Litigation believes that the purpose of proving the seriousness of the nuisance caused by the

19 CJEU, 4 May 2017, C-13/16, Valsts policijas Rīgas reģiona pārvaldes Kārtības policijas pārvalde v Rīgas pašvaldības SIA

„Rīgas satiksme", recital 28. See also CJEU, 11 December 2019, C-708/18, TK v/ Asociația de Proprietari bloc M5A-

ScaraA, recital 40.

smoke emissions and its impact on the health of neighbors should be considered as

made for a legitimate interest. In accordance with recital 47 of the GDPR, the interest that the

defendant was suing as controller can in itself be considered as

legitimate. The first condition set out in article 6.1.f) of the GDPR is therefore fulfilled.

70. In order to fulfill the second condition, it must be demonstrated that the processing is necessary for the

achievement of the aims pursued. More specifically, this means asking whether the

same result cannot be achieved with other means, without data processing to

personal nature or without unnecessary substantial processing for the data subjects.

71. Starting from the purpose, namely the demonstration of the negative impact of smoke emissions on the

health of neighbors with the possibility for them to find the origin of the nuisance,

it should therefore be checked whether the publication of images showing smoke escaping from a

chimney with the indication of the name and address of the person responsible for the emissions of

smoke may or may not contribute to the protection of citizens from fire smoke infiltration from

drink. The information that the defendant collects and shares via the z [...] to draw attention to

the harmful consequences of smoke emissions without proceeding in this respect to the treatment of

personal data, is fully consistent with the purpose pursued.

72. However, the publication of images with the complainant's name and address is not the only

consequence that the person concerned is qualified online as a polluter, without any possibility

defense. This method offers no added value in the fight against smoke emissions

and the protection of citizens. If the intention of the defendant is to allow the neighbours, by this

practice, to determine the origin of the smoke emissions and then to constitute part

civil law, the Litigation Division considers that this purpose can also be achieved without
publication of the images with the complainant's identification data, mentioning only the
region where the smoke emissions occur, so that a citizen living in that region can
possibly file a civil action against X. the second condition is therefore not met
the fact that the principle of data minimization (article 5.1.c) of the GDPR) has not been respected.
73. In order to check whether the third condition of Article 6.1.f) of the GDPR - the so-called "test of
balancing" between the interests of the controller on the one hand and the freedoms and rights
fundamentals of the person concerned on the other hand - can be fulfilled, one must first take
account the reasonable expectations of the data subject, in accordance with recital 47 of the
GDPR. In particular, it must be assessed whether "the data subject can reasonably
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expect, at the time and in the context of the collection of personal data, that
that they are processed for a given purpose”20.
74. This aspect is also underlined by the Court in its judgment "TK v. Asociația de Proprietari bloc
M5A-ScaraA" of December 11, 201921, which states the following:
"Also relevant for the purposes of this balancing are the reasonable expectations of the
data subject that his or her personal data will not be processed
where, in the circumstances of the case, that person cannot reasonably
expect further processing of these."
75. Regarding this third condition, the Litigation Division can only note that the
complainant could at no time expect the images to be published with his
name and address.
76. The defendant also did not ask for the consent of the complainant (article 6.1.a) of the GDPR)
to publish the images in question with his name and address. The defendant was satisfied
to inform the complainant of the publication already made, asking him to do something to
the smoke infiltration it would cause. Although consent within the meaning of Article 4, 11) of the

GDPR is the only possible legal basis that the defendant could have invoked to be able to

proceed with the publication in question, he did not ask the complainant for such consent.

77. The other legal grounds listed in article 6.1. under b) and c) do not apply in this case.

78. The Litigation Division considers that all of the elements presented demonstrate that the

defendant cannot rely on any legal basis demonstrating the lawfulness of the processing

of data as implemented by it. The Litigation Chamber decides that the offense

in clause 6.1. of the GDPR is proven. Considering that videos with mention of the name

and the plaintiff's address were removed by the defendant from the website www.z. [...] and

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respondent. When determining this penalty, the Litigation Division also takes

account of the fact that the complaint is part of the broader framework of a conflict between the parties, namely

a neighborhood dispute, the Litigation Chamber noting that it does not come under the

mission of the Data Protection Authority to intervene in this respect with regard to the aspects

which do not concern the processing of personal data. The Litigation Chamber

20 Recital 47 GDPR.

21 CJEU, 11 December 2019, C-708/18, TK v Asociația de Proprietari block M5A-ScaraA, recital 58.

therefore decides that, having regard to the concrete factual circumstances of this case, a reprimand

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enough.

d) Damages

79. The Litigation Division cannot accede to the plaintiff's request to grant

damages since it does not have this jurisdiction.

e) Publication of the decision

80. Given the importance of transparency regarding the decision-making process of the Chamber

Litigation, this decision is published on the DPA website. However, it is not

necessary for this purpose that the identification data of the parties are directly

communicated.

FOR THESE REASONS,

the Litigation Chamber of the Data Protection Authority decides with regard to the defendant, after

deliberation:

- to close the complaint without further action, pursuant to Article 100, § 1, 2° of the LCA, for the part of the

complaint about a fake Facebook account;

- to formulate a reprimand, pursuant to Article 100, § 1, 5° of the LCA, following the violation of

section 6.1. of the GDPR.

Under article 108, § 1 of the LCA, this decision may be appealed within a period of

thirty days, from the notification, to the Court of Markets, with the Authority for the Protection of

given as defendant.

Hielke Hijmans

President of the Litigation Chamber