

GZ: 2021-0.187.619 from April 7, 2021 (case number: DSB-D124.2575)□

[Note editor: Names and companies, legal forms and product names,□

Addresses (incl. URLs, IP and email addresses), file numbers (and the like), etc., as well as□

their initials and abbreviations may be abbreviated for reasons of pseudonymization□

and/or changed. Obvious spelling, grammar and punctuation errors□

have been corrected.]□

NOTICE□

S P R U C H□

The data protection authority decides on the data protection complaint of DI Ahmed A***□

(Appellant), represented by B*** & Partner Rechtsanwälte, ***straße *4, **** U***,□

dated August 21, 2020 revised September 18, 2020, vs. 1. N***, Inc., ****, United□

States of America (first respondent) and 2. N*** Austria GmbH, ***straße *5/**/2*,□

**** I***, Austria (second respondent) for violation of the right to erasure as□

follows:□

1. The complaint against the first respondent is upheld and it will□

established that the first respondent to the complainant in his□

violated the right to erasure by responding to the request for erasure of the□

Complainant from March 19, 2020 until the end of the proceedings before the□

data protection authority has not complied.□

2. The first respondent is asked to do so immediately, but at the latest□

within a period of two weeks, otherwise execution, the URL□

https://sdgliste.justiz.gv.at/edikte/sv/svliste.nsf/1****□

and□

the□

URL□

https://edikte.justiz.gv.at/edikte/sv/svliste.nsf/2**** from the N*** search index in the□

Related to a search for the names “Ahmed Á***” and “Ahmed A***” □

[Editor's note: These are two different spellings □

of the complainant's name]. □

3. The complaint against the second respondent is considered unfounded □

rejected. □

Legal basis: Article 2 paragraph 1, Article 3 paragraph 2 letter b, Article 6 paragraph 1 letter f, Article 17 paragraph 1 and □

Paragraph 3, Article 51 Paragraph 1, Article 57 Paragraph 1 Letter f, Article 58 Paragraph 2 Letter g and Article 77 Paragraph 1

Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter: GDPR), OJ. □

No. L 119 of 4.5.2016 p. 1; Sections 18 (1) and 24 (1) and (5) of the □

Data Protection Act (DSG), Federal Law Gazette I No. 165/1999 as amended; § 3b paragraph 1 of the expert □

and Interpreter Act (SDG), Federal Law Gazette No. 137/1975 as amended. □

REASON □

A. Submissions of the parties and course of the proceedings □

1. With complaint of August 21, 2020, improved with submission of September 18, 2020, □

the complainant submitted in summary that the second respondent had him □

violated his right to erasure because they did not correspond to a requested erasure □

have. The complainant had one on his LinkedIn profile in the past □

analytical factual presentation [Editor's note: The subject, concerning historical □

Events in the Balkan region has been removed in order to pseudonymize the identity □

of the complainant.] posted and subsequently by unknown persons □

Threat to [Editor's note: Language has been removed to avoid pseudonymization □

to reinforce the identity of the complainant.]. The complainant is afraid □

therefore for his physical integrity. When entering the complainant's name in □

the search engine of N*** appears a link to □

internet address □

"edikte.justiz.gv.at", where the home address of the complainant is directly visible. Of the □

The complainant therefore requested the deletion of the link on March 19, 2020, which

was rejected by letter dated March 31, 2020. Starting from the feared

Impairment of the applicant's physical integrity (death threat) was of

a significant risk to the person concerned. In the sense of

The balancing of interests is the protection of physical integrity compared to others

give priority to interests (e.g. of the person responsible). The request for deletion is

to the act.

2. With a statement dated October 27, 2020, the second respondent brought

summarized, that they are neither legally authorized nor factually able

is to process requests for deletion from users. The complainant's request for erasure

was therefore forwarded to the first respondent.

3. With a statement dated November 18, 2020, the respondent brought

(although without a request from the data protection authority) in summary that

the "right to be forgotten" according to Art. 17 GDPR does not exist, among other things,

if processing of personal data for the exercise of the right to information

is necessary (Art. 17 Para. 3 lit. a GDPR) or if this is necessary to fulfill a legal obligation

obligation of the person responsible is required (Art. 17 Para. 3 lit. b GDPR). Of the

Complainant was in connection with his work as [note editor:

Occupation removed to increase pseudonymization of complainant's identity]

in a publicly accessible database, which is part of the main website of the Austrian judiciary

belong, listed as a generally sworn and court-certified expert. For

this public list has a legal basis. The assertion of

complainant that the publication represented a danger to his life and limb

unsubstantiated and therefore the public interest in access to legally legitimized

Information from an authority is to be weighted higher in the present case than the individual

right to be forgotten. Since the complainant was still active until the end of 2022

expert is certified, the information is up-to-date from the point of view of the public and□
relevant. In addition, in this case the complainant has the opportunity to□
Removal of his entry directly to the body responsible for this database□
effect.□

4. The Data Protection Authority sent a request for assistance to the Irish on 4 December 2020□
Supervisory Authority (DPC) questioned whether the first respondent or N*** Ireland□
Limited has jurisdiction over requests to have N*** search engine results removed. the□
Irish regulator has stated that the First Respondent has jurisdiction. the□
Information from the Irish Data Protection Authority dated 10 December 2020 was also dem□
complainant submitted.□

5. By letter dated 3 March 2021, the complainant submitted in summary that□
the complaint is in any case also directed against the first respondent and the□
applications would be maintained.□

B. Subject of Complaint□

Based on the submissions of the complainant, it is clear that the subject of the complaint□
the question is whether the Respondents defend the Appellant in his right to□
have violated deletion by complying with the request for deletion of the complainant dated□
March 19, 2020 until the end of the procedure before the data protection authority□
have fully complied.□

C. Findings of Facts□

1. The complainant is a court-certified expert and as such in the□
publicly accessible database of court experts and court interpreters□
of the Federal Minister of Justice.□

The complainant's entry is specifically as follows (formatting not 1:1□
reproduced):□

[Editor's note: The entry reproduced at this point as a graphic file□

of the complainant in the list of court experts can be done with reasonable effort□

not be pseudonymised. It contains the name (including titles and academic□

degrees), the year of birth, the profession, the specialist area as an expert, the address, the□

E-mail address and a telephone number of the complainant.])□

When the complainant's name is entered via the N*** search engine, the□

Link to the complainant's above-mentioned entry on the first page of the N***-□

search results.□

Specifically, the following N*** search result is displayed (formatting not reproduced 1:1):□

[Editor's note: The result reproduced at this point as a graphic file□

a search using the N*** search engine cannot be carried out with justifiable effort□

be pseudonymised. The first two links found are visible, the first to□

a social network, the second directly to the complainant's above entry in□

leads the list of court experts.])□

The N*** search engine is operated by the first respondent.□

Evidence: The findings are based on□

insofar as they match□

Statements of the complainant of August 21, 2020 and the statement of□

first respondent□

dated November 18, 2020. Beyond□

led the□

Data protection authority an ex officio search in the form of an N*** search query (input□

of the complainant's name in the N*** search engine) and in the form of a□

Database query of the list of court experts and court interpreters□

(requested on April 7, 2021). The finding that the N*** search engine from the□

first respondent is operated, results from the statement of the□

First respondent of November 18, 2020.□

2. The complainant published a post on the Z*** platform. In it he dealt
dealing with [Editor's note: The subject, concerning historical events in the
balkan region,
has been removed to avoid the pseudonymization of the
identity of
to reinforce the complainant]. The complainant then received a threat from
unknown.

Assessment of evidence: This finding follows from the applicant's submissions
in the context of his statement of August 21, 2020. The Respondents have
not expressly contested this claim. There are no other indications,
to cast doubt on this claim.

3. The complainant submitted on March 19, 2020
following request to the

First respondent using an electronic model application form
of the first respondent (formatting not reproduced 1:1):

[Editor's note: The one reproduced at this point as a graphic file

The complainant's request for deletion cannot be made with reasonable effort
be pseudonymised. It contains the qualifiers of two URLs that are no longer
to be displayed, the name, email address of the complainant, the

Indication of requesting deletion on your own behalf and the reason why

Threatened strangers by phone because of an Internet posting that has since been deleted
to have been.]

The first respondent

responded to the above request

Complainant by letter dated March 31, 2020 as follows (excerpt, formatting not
reproduced 1:1):

[Editor's note: The one reproduced at this point as a graphic file]

Response letters cannot be pseudonymised with reasonable effort. It contains

under a reference number the notification that the relevant search results are not

be blocked, among other things, because the corresponding content is made public by an authority

Be made available, the recommendation to contact directly for the appropriate

websites responsible, as well as the indication that a complaint to the

"data protection authority of their country" is possible.]

Evidence assessment: These findings result from the opinion of the

Complainant dated September 18, 2020 and the enclosures submitted therein. This one

visible screenshots

find each other

in supplement .A. The finding that the

Complainant's request form to remove personal data from N***

has used, it follows from the consideration that N*** for requests for deletion of

Search engine results provides an electronic form and the content

of the complainant's application with the

Electronic form content

basically agree. N***'s web form

is accessible at:

https://www.n***.com/*** (accessed April 7, 2021).

4. In the above sample request form to remove personal information from

N*** includes the following (excerpt, formatting not reproduced 1:1):

[Editor's note: The text reproduced here as a graphic file from the

Website of the first respondent, which does not pseudonymise with reasonable effort

can be, contains the indication that the first respondent is "responsible for the

Processing of personal data involved in determining search results in the

N*** search is performed".]

Evidence assessment: These findings result from official research by the

Website Data Protection Authority https://www.n***.com/*** (accessed 7 April 2021).

D. In legal terms it follows that:

2. Regarding point 1 (first respondent)

a) On the distribution of roles under data protection law

The first respondent processes personal data of the complainant

within the meaning of Art. 4 Z 2 DSGVO by recording them and then search results in the form

of URLs containing the submitted data of the complainant

are. By allowing the complainant to use the Internet automatically, continuously and systematically

searched for the information published there, this therefore collects personal data

Data within the meaning of Art. 4 Z 1 GDPR, which she then reads, is stored in an organized manner on her

servers

kept

and

because of

a search query

provides. There

the

First respondent thus about the purposes and means of the processing of

decides on personal data, it is responsible within the meaning of Art. 4 Z 7

DSGVO (cf. the judgment of the ECJ of May 13, 2014 on the comparable legal situation

- C-131/12).

A request for assistance from the Data Protection Authority and the subsequent information from the Irish

Data Protection Authority

from the

10th of December

2020

to have

approved,

that

the

First Respondent (and not the Second Respondent or N*** Ireland Limited)

responsible is.

Finally, the first respondent in the ongoing proceedings is responsible for

the data processing relevant here was also never disputed.

b) Right to erasure:

i) Legal bases

According to Art. 17 (1) (d) GDPR, a data subject has the right, among other things, from which

to demand that the person responsible immediately transfer personal data concerning them

deleted if the personal data are processed unlawfully.

According to Art. 17 Para. 3 lit. a GDPR, there is in Para. 1 leg. normalized right however then

not if the data processing is to exercise the right to freedom of expression and

information is required.

It therefore subsequently has an assessment of the authorized persons within the meaning of Article 6 (1) (f) GDPR

Interests of the first respondent (as the operator of the search engine) and third parties (the

General public that uses the search engine) and are related to the interests

as well as possible consequences for the complainant, which are caused by the subject matter

Processing arise to weigh.

ii) **balancing of interests**

The interests of the first respondent lie in an Internet search engine

operate and make them (or their search results) available to the general public

(cf. the notification of January 15, 2019, GZ: DSB-D123.527/0004-DSB/2018, according to which the

Art. 11 EU-GRC enshrined right to freedom of expression and information

or the right to freedom of expression enshrined in Art. 10 ECHR - in addition to the

Expression of opinions - also expressly the receipt and transmission of

protects messages or ideas).

In contrast, the complainant relies on the fact that he was relieved by the

Findability of his home address via a search with the search engine

first respondent to an increased risk for his physical integrity as well

subjected to comparable circumstances. This in particular against the background that

the applicant had received a death threat in the recent past.

In its guidelines 5/2019 on the criteria of the European Data Protection Board, the European Data Protection Board

Right to be forgotten in cases relating to search engine entries in margin no. 13

stated that when weighing interests, the "special situation" of a person

must be taken into account. As an example, the committee "Disadvantage in private life"

on.

Even more explicit was the former Art 29 data protection group, which in its "Guidelines on the

implementation of the Court of Justice of the European Union Judgment on ,Google Spain

and Inc v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González' C-

131/121" on page 13 as an important criterion when weighing up the interests of the

eliminates the "risk for data subjects" associated with the search engine result.

In the present case, the data processing means that the complainant

is at increased risk of physical harm.

To the

argument

the

first respondent,

that□

the□

Database□

the□

Court experts and court interpreters can't be seen by the public□

to be followed:□

Basically, it should be noted that Art. 8 EU-GRC and the GDPR - unlike § 1 para. 1□

DSG - no exclusion of the protection of personal data due to their□

(allowed) general availability.□

The purpose of the database to be set up by the Federal Minister of Justice is in accordance with Section 3b□

Para. 1 SDG is a generally available query option for ordering□

to enable court experts and court interpreters.□

However, this purpose can also be easily fulfilled if the application relevant here□

on deletion of the complainant is fulfilled:□

It can therefore be assumed that judges are responsible for the careful research of□

court experts□

and court interpreters□

Not□

on□

the□

from□

the□

First respondent-operated search engine, but directly to the database of the□

Federal Minister of Justice. In addition, such research is in progress□

therefore carried out to an expert who is still unknown by name - about one□

civil engineer as the complainant is - within a certain precinct too□

Find.□

Likewise, the argument of the first respondent that the complainant could□

Cause deregistration from the database not to be followed, as it is in the context□

the above-mentioned database research by judges no more than□

Experts would be considered, which in turn is a significant limitation□

according to his professional freedom in accordance with Art. 15 EU-GRC or entrepreneurial freedom□

Art. 16 EU-GRC would result.□

However, this argument also fails because the ECJ□

Deletion obligation of the first respondent independent of that of the operator□

the original website has approved. In other words: Just because there is no deletion on the□

Original website was applied for or took place, this does not have the inadmissibility of□

deletion□

in the list of results operated by the first respondent□

search engine (judgment of the ECJ of September 24, 2019, C-136/17, margin nos. 62 to 64).□

The complainant is also not publicly known due to his expert work□

or even a public figure.□

It is true that unknown third parties have obtained the complainant's residential address□

basically could research without N***; however, this requires the additional knowledge□

requires that the complainant is in the above-mentioned database of the Federal Minister□

is registered for justice, which is why the research of his residential address without this□

additional knowledge is considerably more difficult or even impossible.□

Against the background of all these considerations, the□

interests of□

Complainant, which is why the facts of Art. 17 (3) lit. a GDPR are not met.□

This result also corresponds to the general assessment of the ECJ, according to which□

The right of the data subject protected by Art. 8 EU-GRC in principle compared to the□

Internet users' interest in accessing information from search engine results□

predominates (cf. again the judgment of the ECJ of September 24, 2019, margin no. 66 with further references).□

There are no indications, in the present case of this generally taken□

to deviate from the judgment of the ECJ.□

iii) Outcome□

The first respondent has the complainant's application of March 19, 2020 in□

Result incorrectly not met.□

2. Regarding point 2 (performance mandate)□

The first respondent was therefore pursuant to Art. 58 (2) lit. g GDPR in conjunction with Section 24 (5).□

DSG to request deletion (or delisting).□

A period of two weeks seems appropriate to get two URLs as a search engine result□

in connection with the name “Ahmed A****” or “Ahmed Á****”.□

3. Regarding point 3 (second respondent)□

As is clear from the facts, the complainant submitted the request for deletion□

Art. 17 GDPR (only) against the first respondent, but not against the□

Second respondent directed.□

In N****'s electronic model form, it was also clear to the complainant that□

that the application is (only) transmitted to the first respondent.□

The second respondent had to submit the application that is the subject of the complaint□

The complainant's deletion of March 19, 2020 therefore does not deal with it and was also□

not required to react within the meaning of Art. 12 (4) GDPR.□

The complaint against the second respondent is therefore based solely on this□

Grounds as unfounded, further investigative steps with regard to the responsibility of□

The second respondent could therefore remain silent.□

It was therefore to be decided accordingly.□