Litigation Chamber

Decision on the merits 133/2021 of 2 December 2021

File number: DOS-2020-00233

Subject: Access to the nominative professional e-mail address and use of this address

after the end of the employment contract

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

chairman, and Messrs. Dirk Van Der Kelen and Frank De Smet, members;

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

of natural persons with regard to the processing of personal data and to the free movement

of this data, and repealing Directive 95/46/EC (General Data Protection Regulation),

hereinafter “GDPR”;

Having regard to the Law of 3 December 2017 establishing the Data Protection Authority, hereinafter "LCA";

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;

made the following decision regarding:

the complainant :

Mr. X, hereinafter "the plaintiff";

The defendants: de facto association, Y1, hereinafter “defendant 1”;

National Secretary, Y2, hereinafter “Defendant 2”;

former President, Y3, hereinafter “Defendant 3”;

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I. Facts and procedure□

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1. On January 13, 2020, the complainant lodged a complaint with the Authority for the Protection of□

given against the defendants.□

The subject of the complaint concerns the use of the nominative professional e-mail address of the□

plaintiff by the defendants, after the end of his employment contract. This complaint follows a□

email sent by defendant 2, in response to an email sent by a former classmate□

of the complainant, in which it was mentioned that the professional e-mail address Y1 on behalf of the□

complainant had ceased to exist. This e-mail was allegedly addressed to the former classmate of the□

plaintiff as well as to all the other recipients of the e-mail sent by this former comrade of□

class.□

2. On January 17, 2020, the complaint was declared admissible by the Front Line Service on the basis□

of Articles 58 and 60 of the LCA and the complaint is transmitted to the Litigation Chamber pursuant to□

Article 62, § 1 of the LCA.□

3. On April 15, 2020, the Litigation Chamber 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 15, 2020, 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. They are also informed□

under Article 99 of the LCA, deadlines for transmitting their conclusions. Because of□

special circumstances related to COVID-19, this information was sent only by□

e-mail and not (also) by registered post.□

The deadline for receipt of the submissions in response from the defendants was fixed at□

May 27, 2020, that for the complainant's submissions in reply to June 17, 2020 and that for the□

submissions in reply of the defendants on July 8, 2020.□

5. The Litigation Division does not receive any submissions in response from the defendants.

6. On June 9, 2020, the Litigation Chamber confirms to the plaintiff that the defendants omitted
to introduce conclusions in response.

7. On June 11, 2020, the Litigation Chamber receives the complainant's submissions in reply, in
which he reiterates his complaint and describes the context of the mutual relationship between himself and
the defendants before the end of the collaboration. It would be a series of events that the complainant
qualifies as harassment.

8. The Litigation Division does not receive any reply submissions from the defendants either.

9. In the absence of any defence, the Litigation Chamber takes the initiative on June 23, 2021 to offer
one more last possibility for the defendants to introduce means of defense and fixes at this
end of the deadline for the submission of conclusions on 12 July 2021.

10. On June 25, 2021, the Litigation Chamber received a letter from the law firm representing the
defendants in this case, with the question of who are the parties involved in the
case. It is stated in the letter that despite the reference to different e-mails in the inventory of
documents in the file, no correspondence was received in connection with the file. A copy of
all the documents in the file are also requested.

11. On June 28, 2021, a copy of the file is sent and the Litigation Chamber indicates that the
complaint, as formulated by the complainant, is brought against the respondent 1,
together with defendant 2 and defendant 3 in person, who are mentioned as
data controllers. The Litigation Chamber refers in this respect to the letters of the
April 15, 2020 and June 23, 2021, which show who the data controllers are.

12. On June 30, 2021, defendants 2 and 3 ask the Litigation Chamber for an extension of the deadline
for the conclusions, which the latter accepts on July 1, 2021. The new deadline for the conclusions
is set for August 16, 2021.

13. On July 19, 2021, the Litigation Division received a letter from defendant 1 indicating that the

administrative file is vitiated by procedural defects, as a result of which, according to the

defendant 1, the examination of the file should be stopped. In the alternative, a request for postponement of the

deadline for conclusions is also formulated, which is accepted by the Litigation Chamber

July 30, 2021. The new deadline for submissions is September 14, 2021. As regards

concerns points of procedure, defendant 1 is informed of the possibility of mentioning them

in the conclusions.

14. On August 16, 2021, the Litigation Chamber receives the submissions in response from defendant 1 as well as

as defendants 2 and 3, and the request to be heard.

15. On September 6, 2021, the parties are informed that the hearing will take place on October 12, 2021.

16. On October 12, 2021, the parties are heard by the Litigation Chamber.

17. On October 18, 2021, the minutes of the hearing are submitted to the parties. Following the document filed

by the complainant during the hearing, which is annexed to the minutes, the possibility is offered

the defendant to take a position on this subject in writing. For his possible response to the document

filed during the session, the defendant has the same time limit as that within which it is possible

to react to the minutes. The debates are then closed and the matter is taken up for deliberation.

18. On October 21, 2021, the defendants request a postponement for the introduction of written replies

to the document filed by the complainant during the hearing, which is granted by the Chamber

Litigation on October 22, 2021, which sets the deadline for November 10, 2021.

19. On October 25, 2021, the Litigation Chamber receives from the defendant some remarks relating to

in the minutes which it decides to include in its deliberation.

20. On November 10, 2021, the Litigation Chamber receives the submissions in reply from the

respondent.

II. Motivation

Procedure

21. The Respondents advance several elements from which they believe they can infer that the procedure

monitored by the Litigation Chamber is marred by several irregularities. Bedroom

Litigation explains each of these points:

has)

Send recommendations

22. The defendants assert that they were never informed by registered mail of the decision of

the Litigation Chamber in which it declares that the file can be examined on the merits.

Despite this formal requirement, prescribed by Article 98 of the LCA juncto Article 95, § 2 of the LCA,

the defendants note that the administrative file only contains an e-mail to this effect but

they never received it.

23. With regard to registered mail, the Litigation Chamber indicates that this requirement of

form has always been respected, but that the current social context relating to COVID-19 has forced it

to move to sending all correspondence by e-mail, where only the final decision is sent to

parties both by registered mail and by e-mail. As already mentioned in the e-mail from

June 28, 2021, the Litigation Chamber offered the defendants the opportunity to defend themselves through

to a new deadline for submissions, in order to respect their rights of defence. Given

that a new deadline for conclusions was requested in the letter of June 16, 2021, received by the

Litigation Chamber on July 19, 2021, a new deadline for submissions was granted to the

defendants.

24. The Litigation Division further emphasizes that the procedural safeguards must of course

be complied with and that if there had been a risk that the defendants would have been disadvantaged by the

manner in which the notification was sent, this disadvantage was subsequently eliminated, which excludes

any unfair treatment. The problem raised by the defendants does not mean that the

rights of defense were violated because the defendants had the opportunity to advance their

argument in its entirety by means of their submissions in response and they were further able

fully exercise their right to contradict during the hearing of the Litigation Chamber.

The defendants therefore suffered no prejudice.

25. This applies equally to the assertion of the Respondents in their pleadings in

rejoinder that neither in their submissions in response, nor during the hearing, they could not have

to defend itself with respect to the violations listed in the plaintiff's conclusions, filed during

of hearing. Here too, fair treatment must be assessed throughout the process.

Given that the Litigation Chamber has again offered the defendants the possibility of defending themselves by

compared to the exhibit filed by the plaintiff during the hearing and that the defendants made use of

this possibility by filing additional submissions, the rights of defense of

defendants were therefore well and truly respected.

26. Furthermore, the Litigation Chamber observes that on the one hand, it is claimed that the e-mail with the

calendar of conclusions dated April 15, 2020 was not received at the e-mail address [...], while

on the other hand, it is claimed that the email of June 23, 2021 which was also sent to [...] would have had

the effect that the data of the collaborators, namely defendant 2 and defendant 3, have been

"simply tossed to the ground"

General Secretariat of the Authority, in the absence of an official translation] According to the Chamber

Litigation, this last element demonstrates that the messages addressed to the e-mail address in

question have indeed been read.

b)

Notification of the decision on admissibility and the decision that the file

can be processed on the merits

27. The Respondent maintains that he was not informed of the decision of the Front Line Service

concerning the admissibility of the complaint, nor of the decision of the Litigation Chamber according to which

the case could be dealt with on the merits.

28. The Litigation Chamber explains that the decision of the First Line Service relating to the

admissibility of the complaint is included in an e-mail addressed to the Litigation Chamber and that

the e-mail in question is an integral part of the administrative file. Following this e-mail, the Chamber

Litigation has started the examination procedure on the merits. The Litigation Chamber uses a single
letter to inform the parties (both the complainant and the respondent) of the admissibility of the complaint
pursuant to section 61 of the ACL - this provision requires sensu stricto that only the complainant
be informed of the admissibility of his complaint - as well as of the initiation of the procedure on the merits, in
containing all the information in accordance with article 98 of the LCA juncto article 95, § 2 of
the ACL.
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29. With regard to the decision on admissibility as well as the decision that the file
can be dealt with on the merits, the Litigation Division therefore refers to these same e-mails from
April 15, 2020 and June 23, 2021, with the attached letters, in which the parties are
explicitly informed of the fact that the complaint was declared admissible on January 17, 2020 by the
First Line Service and that the Litigation Chamber has decided that the case can be
treated on the merits. This therefore means that the letter with the calendar of conclusions serves as
as such of notification to the parties, both of the decision relating to admissibility and of that according to
which the file can be examined on the merits, so that both Article 61 of the LCA and
Article 98 of the LCA juncto Article 95, § 2 have been complied with.
vs)
Duty to state reasons
30. The defendants assert that the Litigation Division did not respect the obligation to state reasons
the fact that the grounds on the basis of which it assessed whether the file could be dealt with on the merits
(article 95, § 1, 1° of the LCA) have not been brought to their attention; so they don't understand
why the Litigation Chamber did not decide to use the other possibilities provided for in
article 95, § 1, 2° - 8° of the LCA).
31. The Litigation Chamber observes that in this regard, the defendants refer to the judgment of the Court
of the markets of October 9, 20191 which stipulates that it is necessary to include in the decision the reasons on
which it rests. However, the Litigation Chamber must point out that the decision

challenged subject of the above-mentioned judgment concerned a final decision of the Chamber
Litigation. The judgment does not provide that the decision that the file can be
treaty on the merits, which precedes a final decision of the Litigation Chamber, must be reasoned.
32. With regard to the alleged violation of the obligation to state reasons, the Litigation Chamber
draws attention to the fact that the decision of the Litigation Chamber according to which the file can
to be examined on the merits does not constitute a final decision, but merely precedes the decision
substantive final. Only the final decision must be motivated. The mail containing the calendar
of the conclusion contains all the information prescribed by article 98 of the LCA and aims
precisely to justify the decision of the Litigation Chamber, on the basis of the means of defense
introduced by the parties, in compliance with the rights of defence. This decision constitutes
this final decision and as such, it must therefore be reasoned.
33. In addition, there is in no case any obligation to give negative reasons, to leave the Chamber
Litigation is not required to justify why it would not have had recourse to the others
possibilities provided for in article 95, § 1 of the LCA.
1 No. 2019/7537
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d)
Language Policy Note
34. In their pleadings, the defendants return to the irregularities as set out in their
letter of June 16, 2021, received by e-mail by the Litigation Chamber on July 19, 2021.
35. The Litigation Chamber observes that in the aforementioned letter to which the conclusions
refer, the defendant indicates that the Litigation Chamber would have violated the note relating to the
language policy. Although in the submissions, the defendants do not go into the
alleged violation of the language policy note, but instead refer to the
letter of June 16, 2021 in which they claim that such a violation occurred, the Chamber
Contentious examines this point in more detail, for the sake of completeness.

36. With regard to the note relating to the language policy, the Litigation Chamber observes that

in the letter attached to the email of April 15, 2020, it was not possible to apply the note

on language policy, given that the note in question is subsequent to it, since it dates from

January 7, 2021.

37. With regard to the letter attached to the email of June 23, 2021, the procedural language is not

not mentioned either, since it does not appear from any document in the file that defendant 2 and the

defendant 3 would use another national language, and that the mail is addressed to them at the address

from Y1, in Zaventem, which is in the Dutch-speaking region. This allows to

conclude that the Litigation Chamber has not departed from the principles of the note relating to the policy

linguistic.

Data controller

38. During the hearing, the Litigation Chamber sought information enabling it to determine

whether the defendants should be considered joint controllers or not.

The elements brought to light during this analysis revealed that defendant 2 and defendant 3

did not act in their own name but only by virtue of the function they hold in the

framework of the activities of the defendant 1, and that they therefore acted in the name and on behalf of the defendant

1. The Litigation Chamber concludes that there is only one controller, namely the

respondent 1, which determined the purpose and means of the processing complained of.

Defendants 2 and 3 only acted by virtue of their office, not on their own,

but under the direct authority of Respondent 1. Consequently, this decision concerns

only defendant 1.

39. The argument put forward by Respondent 1 at the hearing and in the supplementary pleadings

according to which it is not him but the general organization Y1 which must be considered (at the level

national) as the data controller, since the latter sets the guidelines

regarding the GDPR policy within the various professional groups (including Y1), has

appointed a data protection officer and defines the purpose and means of the processing of

personal data, is not monitored by the Litigation Chamber. The facts

of the record reveal in this case that the management of defendant 1 asked defendant 2 to ensure

tracking messages from the complainant's mailbox. In this specific case, defendant 1 therefore has

and given instructions for managing the complainant's e-mail account and mailbox.

this way after the termination of the collaboration. It is therefore undeniable that Respondent 1 determined

the purpose and means of this specific processing and must be considered to be responsible

of the treatment.

Object of the complaint

40. The Litigation Chamber was seized of the complaint concerning the use of the e-mail address

nominative professional of the plaintiff by the defendants, and this after the end of his contract of

work. This complaint follows an email sent by Respondent 2, in response to an email sent

by a former classmate of the complainant, in which it was mentioned that the e-mail address

professional Y1 on behalf of the complainant had ceased to exist. This e-mail would have been addressed to the former

classmate of the complainant as well as to all other recipients of the e-mail sent by

the old classmate.

41. Respondent 1 attempts to limit the Complaint to viewing a private email and responding to it.

e-mail and to this end clings to the statement made by the complainant during the hearing that

the latter does not consider access to his professional mailbox for questions

professional as a violation of his personal data.

42. The Litigation Chamber observes that the knowledge by defendant 2 of the private e-mail

addressed to the complainant on his professional e-mail address was only possible because the address

work email continued to exist and was actively used by Respondent 2,

according to the instructions of the defendant 1. The Litigation Chamber therefore expresses itself below on the

complaint of which it was seized, namely the manner in which the professional e-mail address on behalf of the

plaintiff was used by the defendants, and this after the plaintiff's employment contract had

ceased.

Principle of finality enshrined in Article 5.1 b) of the GDPR, combined with non-compliance with Articles 5.1 c)

(minimization) and 5.1 e) of the GDPR (retention period limitation)

43. In its capacity as data controller, Respondent 1 is required to comply with the principles of

data protection and must be able to demonstrate that these are respected (principle

liability – article 5.2. GDPR).

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44. He must also, also in his capacity as controller, take all necessary measures

necessary to ensure and be able to demonstrate that the processing is carried out in accordance with the

GDPR (Art. 24 GDPR).

45. Article 5.1.b) of the GDPR requires that personal data be collected for purposes

specified, explicit and legitimate purposes and are not further processed in a manner

incompatible with these purposes.

46. It is in the light of the purpose that other principles enshrined in Article 5 will also apply.

of the GDPR: the principle of minimization - according to which only the adequate data,

relevant and limited to what is necessary for the purpose may be processed

(article 5.1 c) of the GDPR) - and the principle of limitation of storage - under the terms of which

data cannot be kept in a form allowing the identification of persons

concerned only for a period not exceeding that necessary with regard to the purposes for

which they are processed (article 5.1 e) of the GDPR).

47. These principles and the resulting obligations for the data controller find a

impact in terms of rights for the data subject when, pursuant to Article 17.1 a)

of the GDPR, the data subject has the right to obtain from the controller the erasure of the

data concerning him when these data are no longer necessary for the purposes for which

which they were collected or processed.

48. The e-mail address complained of and the information contained in the e-mail address

related constitute personal data within the meaning of article 4.1. of the GDPR, being

given that it is information relating to an identified or identifiable natural person.

49. This e-mail address and the associated mailbox, which had been created for professional purposes

within the scope of the defendant's activities, were intended to enable the plaintiff to receive and send

e-mails in the course of his activities for the defendant2.

50. The Litigation Division is of the opinion that in order to comply with the principle of finality (article 5.1 b) of

GDPR), combined with the principles of minimization (article 5.1 c) of the GDPR) and limitation of the

storage (article 5.1 e) of the GDPR), it is the controller's responsibility to provide a

automatic message for the holder of the mailbox who left his function at the latest on the day of

his actual departure. The holder must be notified in advance. This automatic message will warn

any subsequent correspondent of the fact that the person concerned no longer exercises his functions within

of the company and fill in the contact details of the person (or the generic e-mail address) to

contact in its place and place, and this for a reasonable period of time (a priori 1 month).

Depending on the context and in particular on the level of responsibility of the person concerned, a

longer period may be authorized, ideally not exceeding three months. This extension

2 See along the same lines: decision on the merits 64/2020 of September 29, 2020.

must be done with the agreement of the person concerned or, at the very least, after having informed him/her.

An alternative solution must also be sought and implemented as soon as possible.

without necessarily waiting for the ultimate expiry of this extension. This does not, however, prevent

not that after the end of his function, the person concerned can still access his mailbox

mail for a specified period if there is an agreement on this subject between it and the person in charge of the

treatment. This, for example, gives the employee the opportunity to complete the files in progress.

51. Beyond this period, the e-mail address and the mailbox of the person concerned will be

removed3. Indeed, the purpose of processing these personal data is then without

object.

52. Given that the Respondent terminated the collaboration with the Complainant at the end of December 2019,
the Litigation Chamber considers that the processing of the personal data of this
last by means of the e-mail address and the mailbox should have ended within a period
reasonable and that the complainant should have been informed. The Litigation Chamber considers that this
period could have varied from 1 to 3 months provided, as indicated, automatic notification to the
senders of messages to the e-mail address in question that the person concerned was no longer
active within the company, and therefore without the intervention of any third party. Possibly (if both
parties agree) and in general, such a period could also allow a
employee leaving his position still has temporary access himself to the information
contained in the mailbox of his former principal.
53. The documents in the file show that the complainant's e-mail address was still active within
the organization of defendant 1 on January 11, 2020, when the collaboration had already ceased at the end of 2019
and that the complainant had not received any information on the subsequent use of his mailbox and
his e-mail address (apart from the fact that he himself had noticed that he no longer had access to it), and
even less on the fact that arrangements had been made in this regard. Although the indicative deadline
one month after the end of the complainant's professional activities had not yet expired
time of sending the e-mail in question, which makes it possible to affirm that the principle of limitation of
preservation has been respected, the Litigation Chamber must nevertheless note that both the
3 In its Recommendation CM/Rec (2015)5 on the processing of personal data in the context of employment, the Committee of
Ministers of the Council of Europe set out in Principle 14.5. the following: when an employee leaves his employment, the employ
technical and organizational measures so that the employee's e-mail is automatically deactivated. If the content
messaging had to be recovered for the smooth running of the organization, the employer should take appropriate measures to
recover its contents before the employee leaves and if possible in his presence. The explanatory memorandum to the recomme
(item 122) that in those situations where the employee leaves the organization, employers should deactivate the former employe
so as not to have access to his communications after his departure. If the employer wishes to recover the contents of the emplo
must take the necessary measures to do so before the departure of the latter and preferably in his presence. This recommendat

sectoral supplement to the Convention for the protection of individuals with regard to automatic processing of personal data
(ETS 108) illustrates how the principles of purpose, minimization and proportionate conservation, enshrined in both this
Convention as per the GDPR, shall apply.

purpose limitation principle that the data minimization principle has no
respected by the fact that after the departure of the plaintiff, the defendant was still able to access the box
complainant's e-mail address and made use of it and that the complainant's e-mail address was used to send
messages to external people. During the hearing, it turned out that the
IT manager had attached the complainant's mailbox to the respondent 2's client email. Respondent 2
could thus read the e-mails sent to the complainant and, if necessary, reply to them from the address
Complainant's email.

54. The Litigation Chamber therefore concludes that the Respondent violated Article 5.1 b) and
Article 5.1 c) of the GDPR.

Lawfulness of processing

55. Article 6 of the GDPR requires that any processing be based on lawfulness. This means that the
responsible for the treatment cannot start, nor continue as in the present case, a treatment of
data without relying on one of the bases of lawfulness listed in article 6.1 of the GDPR4, which
concretizes the principle of lawfulness set out in Article 5.1 a) of the GDPR.

56. Admittedly, the complainant's mailbox could remain active for a specific period after his
dismissal in view of the legitimate interest of the defendant 1 in compliance with the conditions of article
6.1 f) of the GDPR, insofar as this remained limited to the automatic sending of a communication
standard concerning the departure of an employee, with a view to guaranteeing the proper functioning of
the company and the continuity of its services. Obviously, this was only possible if
comply with the other provisions of the GDPR regarding the legal basis, in particular Article 13. 1 c)
of the GDPR, according to which before starting processing activities, it is necessary to determine the
legal basis that applies as well as the specific intended purpose5, with the obligation for the

controller to inform the data subject.□

4 Article 6.1 GDPR□

Processing is only lawful if and insofar as at least one of the following conditions is met:□

a) the data subject has consented to the processing of his or her personal data for one or more specific purposes;□

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

pre-contractual agreements taken at the latter's request;□

c) the processing is necessary for compliance with a legal obligation to which the controller is subject;□

d) the processing is necessary to protect the vital interests of the data subject or of another natural person;□

e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority ve

controller;□

f) the processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, unless□

The interests or fundamental rights and freedoms of the data subject which require protection of personal data prevail.□

personal, in particular when the person concerned 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.□

5 See in this regard Guidelines 05/2020 on consent within the meaning of Regulation (EU) 2016/679 (points 121-123);□

https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_202005_consent_en.pdf□

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57. In cases where the employee and the employer mutually agree that after his departure,□

the employee can still access his mailbox for a specified period - for example to□

still give the employee the opportunity to close the files in progress -, the consent□

(article 6.1 a) of the GDPR) can constitute a valid legal basis for continuing to use the box□

mail after the end of the collaboration.□

58. However, it is excluded that the complainant's e-mail address is used by the defendant 1□

immediately after dismissal, as was the case here. Indeed, he□

It does not appear from the file that Respondent 1 informed the Complainant of the legal basis he invokes□

now in the proceedings before the Litigation Chamber, namely his "legitimate interest" in□

process the complainant's e-mail address and related messages in the complainant's mailbox

after the end of the contract. Therefore, Respondent 1 processed the personal data of the

complaining against his expectations. The plaintiff refers in this respect to the judgment of the Court of Cassation of

20 May 20196, in which the Court relies on article 124 of the law of 13 June 2005 relating to

electronic communications which provides that no one may take

intentionally

knowledge of

the existence of a

information of any kind transmitted by way of

electronic communication and which is not intended for him personally if he is not authorized to do so

by all persons directly or indirectly concerned, to affirm that the

worker consent is required. Respondent 1 asserts in this respect that in the present case this judgment

does not apply because it concerns the relationship between the employer and the worker, whereas in the

In this case, the complainant acted as an independent service provider. Bedroom

Litigation does not agree with the position of defendant 1, given that the application of article 124 of the law

above relating to electronic communications is not limited to the relationship

employer-employee and does not distinguish between private and professional e-mails either.

59. The Litigation Chamber emphasizes that in this case, there is therefore no legal basis (Article 6.1 of the

GDPR) which can justify that the e-mail address of the complainant is still used, after the cessation

of its activities, on behalf of defendant 1 by another person actively accessing the

mailbox and using the e-mail address to send messages to external persons.

During the hearing, it is explained how it was made possible that the e-mail subject to the

complaint was sent "From: X", but signed by the respondent 2. In order to follow up on the

the complainant's mailbox after his departure, the mailbox in question was added to the client's e-mail

Defendant 2, which allowed Defendant 2 to read and respond to e-mails addressed to the

complainant.

60. The Litigation Division finds that the e-mail address, as well as the data in the

corresponding mailbox, are personal data within the meaning of Article 4, 1) of the GDPR, which

6 https://juportal.be/content/ECLI:BE:CASS:2019:ARR.20190520.5/FR?HiLi=eNpLtDKwqq4FAAZPAf4=; see also in this respect

BĂRBULESCU c. ROMANIA of the ECHR of September 5, 2017

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are lawfully processed under Article 6.1 b) of the GDPR. The treatment takes place

in a professional context and is necessary for the performance of the contract between the complainant and the

Defendant 1. The legal basis defined in Article 6.1 b) of the GDPR, however, ceases to be valid upon

when this contract ends. Regarding the management of the e-mail address and messages

in the mailbox after the end of the contract with the complainant, the respondent does not invoke Article 6.1 b)

of the GDPR but Article 6.1 f) of the GDPR. The Litigation Division notes, however, that in

pursuant to Article 13. 1 c) of the GDPR, it is not possible for the controller to invoke

its legitimate interest to justify the processing from the moment the initial legal basis, in

the occurrence of the execution of the contract, can no longer be invoked because of the end of this execution.

Indeed, it has not been demonstrated that at the time of the end of the contract, the plaintiff was informed of

the legitimate interest invoked by defendant 1 for the processing of his personal data

personnel after the end of the contract.

61. Consequently, the Litigation Division must note that there is no legal basis

who can justify the treatment of the e-mail address after the complainant's dismissal in the manner

which the defendant did. It is thus established that the Respondent committed a violation of Article 6.1

of the GDPR in conjunction with Article 13.1 c) of the GDPR.

Sanction

62. To determine the sanction following violations of Articles 5.1 b) and c), Article 6.1 of the GDPR

juncto article 13.1 c) of the GDPR, the Litigation Chamber takes into account the fact that during the hearing,

it was explained that the complainant's e-mail account was closed on the one hand and that the respondent 1

now has a document containing formal agreements regarding the receipt of

private messages, signed by employers.

63. The Litigation Chamber therefore considers that in the specific situation given, a reprimand

enough. The fact that the association is a de facto association (an organization whose purpose is not to

making a profit) also plays a role in this decision.

III. Publication of the decision

64. Seen

the importance of

transparency regarding

the decision-making process of

bedroom

Litigation, this decision is published on the website of the Authority for the protection of

data. However, it is not necessary for this purpose that the identification data of the parties

are communicated directly.

Decision on the merits 133/2021 - 14/14

FOR THESE REASONS,

the Litigation Chamber of the Data Protection Authority decides, after deliberation and in

pursuant to Article 100, § 1, 5° of the LCA, to formulate a reprimand with regard to defendant 1 because

of the violation of article 5.1 b) and c) of the GDPR juncto article 13.1 c) of the GDPR.

Pursuant to Article 108, § 1 of the LCA, this decision may be appealed to the

Court of Markets within thirty days of its notification, with the Authority of

data protection as defendant.

(Sr.) Hielke Hijmans

President of the Litigation Chamber