

Litigation Chamber

Decision on the merits 103/2021 of 14 September 2021

File number: DOS-2019-05732

Subject: Complaint relating to a request for delisting – classification without action for

technical reasons

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

Chairman, and Messrs. Yves Pouillet and Frank De Smet;

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

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 :

X, hereinafter “the plaintiff”;

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The first defendant: Y1, represented by Me Gerrit Vandendriessche and Louis-Dorsan Joly, hereinafter

after, hereinafter: "The first defendant".□

The second defendant: Y2, represented by Me Gerrit Vandendriessche and Louis-Dorsan Joly, hereinafter□

after, hereinafter: "the second defendant".□

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I. Facts and procedure□

1. On 13 November 2019, the complainant lodged a complaint with the Data Protection Authority□

data against "Y".□

The subject of the complaint concerns the exercise of the right to erasure by the complainant against the□

controller, about the personal data that appear as results□

when the complainant's name is typed into the complainant's search engine. The complainant has□

exercised his rights against the data controller who refused to execute the request.□

The plaintiff submitted his request for erasure against the first defendant on 21□

October 2019. The latter replied on November 7, 2019 with a refusal.□

2. On November 19, 2019, 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 December 16, 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 December 17, 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. They are□

also informed, pursuant to Article 99 of the LCA, of the deadlines for transmitting their□

conclusions.□

5. On December 26, 2019, the second defendant, through his counsel, agreed to□

receive all case-related communications electronically and request a□

copy of the file (art. 95, §2, 3° LCA), which is sent to him on January 6, 2020.□

6. On January 20, 2020 the first defendant, through his counsel, agrees to□

receive all

communications relating to

the matter electronically. Both

defendants express on this occasion their wish to be heard.

7. On January 27, 2020, the Litigation Chamber receives the submissions in response from the defendants

with regard to the findings relating to the subject matter of the complaint. They can be summarized

as following :

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1st plea: the claim is unfounded with regard to the second defendant, who is not

data controller;

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- 2nd means: there are compelling legitimate grounds for the processing (Article 21 of the GDPR) and the

processing is necessary for freedom of expression and information (Article 17.3 of the GDPR).

- 3rd ground: none of the grounds referred to in Article 17.1 of the GDPR are met in this case.

8. On October 28, 2020, the registry of the Litigation Chamber asked counsel for the defendants

to confirm that they maintain their wish to be heard.

9. On November 6, 2020, the defendants confirm their wish to be heard. In the absence of

conclusions on the part of the plaintiff, they request that the Litigation Chamber, with a view to

of the hearing, specify the facts and potential offenses that she intends to examine and that she

allow them to present their arguments in this regard in writing prior to the hearing.

10. On November 9, 2020, the complainant indicated that he wanted to "purely and simply withdraw the complaint

formed, in the hands of the Litigation Chamber against Y2 and Y1" and consent to its

complaint be considered moot.

11. On December 3, 2020, the Litigation Chamber sent a letter to the defendants in response

to their letter of November 6, 2020. It indicates that in their submissions in response they

had the opportunity to present their arguments on the following elements:

-□

the identity of the data controller;□

- possible breaches of Articles 17 and 21 of the GDPR.□

It also indicates that the following points will be the subject of questions during the hearing:□

-□

-□

Articles 12, 13, and 14 of the GDPR;□

Article 6.1.f of the GDPR.□

December 24, 2020 is given as the deadline for filing submissions for the□

defendants.□

12. On the same day, the Litigation Chamber replied to the email of November 9, 2020 from the complainant. She□

indicates that he has taken due note of his decision not to intervene in this matter any longer and specifies that this□

withdrawal does not put an end to the jurisdiction of the Litigation Chamber since it does not aim to□

settle disputes between parties, but also to monitor compliance with the legislation relating to the□

Protection of personal data.□

In application of this, the Litigation Chamber declares to continue the examination of the case in□

question and specifies that a hearing date will be set so that the parties can be heard,□

although the complainant's participation is no longer expected.□

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13. On December 7, 2020, counsel for the defendants spoke by telephone□

with the President of the Litigation Chamber about the organization of the next stages of the□

case.□

14. Following this telephone conversation, on December 14, 2020, the defendants send□

a letter to the Litigation Chamber in which they make the following five requests□

:□

- A clarification as to the entities covered (the first and second defendants);□

- A filing without follow-up of the file and the withdrawal of their identification data from the decision

published;

- The suspension of the file until the judgment of the Market Court in another case

involving the second defendant be rendered;

- Specification of the alleged facts and offences;

- An extension of the deadline to conclude.

15. On December 22, 2020, the Litigation Chamber replied to this letter. It confirms that the parties

in question are indeed the first and second defendants and that a new time limit for submissions

will be communicated to the parties after the Court of Markets has delivered its judgment in the other

case mentioned by the defendants.

16. The judgment of the Markets Court mentioned above is delivered on June 30, 2021. The Court decides that if the

Litigation Chamber wishes to impose measures and sanctions on Y2, which is not in principle

not responsible for the processing of data concerning the search engine, it must demonstrate

and justify the existence in concrete terms of an inseparable link with the data controller, by

occurrence Y1. Concerning the publication of the decision which was the subject of the dispute, without withdrawal of the

identification data of Y2, the Court considers that this choice of the Litigation Division was based

in a valid manner on Article 100, §1, 16° of the LCA and that he was sufficiently reasoned in the case.

II. Motivation

17. The case brought before the Litigation Division concerns the exercise by the plaintiff of his

right to erasure against the defendants. The request relates to links, referenced

in the results offered by the search engine operated by the defendants when the name

of the complainant is wanted.

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18. Reference links are press articles published online that relate to activities

complainant's policies. One of the links is from 2013 and the other three are from 2017. The complainant

believes that these affect his professional opportunities in the context of his research

employment.□

19. The plaintiff's request was rejected by the defendants on the basis that "after examination□
the balance of interests and rights associated with the content in question, including factors□
such as public interest, Y decided not to block it. »□

In their pleadings, the defendants relied on three pleas (see point 7). They ask□
to declare the claim unfounded.□

20. On December 14, 2020, the defendants asked the Litigation Chamber to classify the□
complaint without follow-up.□

21. The Litigation Chamber recalls that it recently published a note relating to its policy of□
classification without follow-up¹. This note clarifies certain elements of its procedure and establishes the priorities□
from the room.□

22. The scenario in this case can be found in point A.6 of this policy. It is indeed a□
file in which the complainant withdrew his complaint. According to the discontinued filing policy, this□
normally implies a filing of the file, except in exceptional circumstances.□

23. So this is□

here for□

the Litigation Chamber to examine whether certain circumstances□
exceptional circumstances justify that the file is not closed without follow-up.□

The case concerns the complainant's exercise of his right to erasure. If this right is□
consider as a major protection of the persons concerned, it is however intimately□
linked to the complainant's desire to exercise his rights. The complainant's informing the Chamber□
contentious of its will to no longer exercise this right therefore empties the file of legal questions□
regarding this point.□

24. However, it appears from the file that other data protection issues could□
also be examined. These are more particularly issues related to the principle of□
transparency and the right to information of the response provided by the defendants to the complainant□

(Articles 12, 13, and 14 of the GDPR). This is also one of the points that the Litigation Chamber

pointed out in his letter of December 3, 2020.

25. The Litigation Chamber considers that these questions could be examined on the merits.

Indeed, the control by the Litigation Chamber is not so much aimed at settling disputes between parties

than being one of the instruments available to ODA to ensure compliance with the rules relating to the

1 Policy of

<https://www.autoriteprotectiondonnees.be/publications/politique-de-classement-sans-suite-de-la-chambre-contentieuse.pdf>

the Litigation Chamber, published

June 2021

ranking

Following

the 18th

without

(available at:

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data protection, in accordance with the provisions of the European treaties, the GDPR and the

ACL. If a complaint is lodged and is then transmitted for examination to the Litigation Chamber

as an admissible complaint, the Litigation Chamber must assess whether the facts related constitute

a breach of one of the legal provisions, compliance with which is subject to control by the APD2. This

control also extends to the evaluation of infringements that the complainant would not have

directly identified himself and that the Chamber would subsequently report in accordance with the

principle of the contradictory.

26. The mere finding that the complainant withdraws his complaint is therefore not such as to remove any violation

which could have been committed previously by the defendant on the one hand and is not likely to

deprive the competent bodies of the Data Protection Authority, including the Chamber

Litigation, of the exercise of their respective competences on the other hand.

27. The Litigation Chamber notes, however, that in the present case, the violations referred to in point 24 are – in the context of this case – inseparably linked to the exercise of the right by the complainant. As the case stands, given the withdrawal of the complaint, the Litigation Chamber has no legal element allowing it to pursue the examination of these violations and to exercise effective the control task assigned to it.

28. In this sense, the Litigation Chamber considers that the file does not fall into the category of files presenting exceptional circumstances which would justify that the file is not closed without continuation.

29. Consequently, the Litigation Chamber decides to close the file without further action for reasons techniques due to the withdrawal of the complaint by the defendant and, consequently, the impossibility of demonstrate other potential violations that can be attributed to the defendant.

30. Due to the dismissal of the decision and its publication methods (see point 30), the Litigation Division considers that the defendant's requests (see point 14) have been encountered and that there is therefore no need to hold a hearing.

III. Publication of the decision

31. Given the importance of transparency with regard to the decision-making process and the substantive decisions of the Litigation Chamber, this decision will be published on the website of ODA by deleting the direct identification data of natural persons.

The direct identification data of the defendant are also deleted, being

2 Decision 63/2020 of the Litigation Chamber, point 22.

given that the decision does not present a sufficient public interest to justify the maintenance of these Decision on the merits 103/2021 - 7/7 data.

FOR THESE REASONS,

the Litigation Chamber of the Data Protection Authority decides, after deliberation:

- Pursuant to Article 100, § 1, 1° of the LCA, to close the file without further action for reasons

techniques ;□

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.□

(Sé) Hielke Hijmans□

President of the Litigation Chamber□