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Litigation Chamber

Decision on the merits 41/2020 of 29 July 2020

File number: DOS-2019-01165

Subject: Complaint by x against y (Right of access to former employer)

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

Hijmans, President, and Messrs. C. Boeraeve and R. Robert, Members, taking over the matter in this

composition.

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 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 plaintiff, represented by its lawyers Maître S. Callens and C. Bachez, lawyers.

The data controller (hereinafter the defendant), represented by his counsel Maître O.

Loupe, lawyer.

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1. Feedback from the procedure

Having regard to the request sent on February 20, 2019 by the complainant to the Data Protection Authority

(ODA);

Given the status of the file by the Front Line Service (SPL) and the attempt at mediation initiated

by the SPL to the defendant;

Given the failure of mediation and the information - dated August 14, 2019 - to the complainant that,

Article 62 LCA gives him, in this case, the possibility of requalifying his initial request for

complaint mediation with explicit consent on his part;

Having regard to the complainant's consent in this regard of September 3, 2019;

Having regard to the decision on the admissibility of the SPL's complaint of November 25, 2019;

Given the decision taken by the Litigation Chamber on December 18, 2019 to consider that the file

was ready for substantive processing under Articles 95 § 1, 1° and 98 LCA;

Having regard to the letter dated December 18, 2019 from the Litigation Chamber informing the parties of its

decision to consider the file as ready for substantive processing on the basis of Article 98

LCA and communicating to them a timetable for the exchange of conclusions;

Having regard to the letter sent on January 20, 2020 to the Litigation Chamber by counsel for the defendant

under which he asks, principally, the Litigation Chamber to record the loss of object of

the complaint lodged. In the alternative, the defendant maintains its earlier defense as

as included in its procedural file, in particular its letter of July 29, 2019 to the SPL of the APD;

Having regard to the letter of January 24, 2020 from the complainant's counsel, under which they indicate that they

can only note the loss of purpose of the complaint lodged by their client;

Having regard to the decision of the Litigation Chamber of January 28, 2020 to continue the examination of the complaint

in accordance with the timetable communicated to the parties on December 18, 2019;

Having regard to the conclusions of the complainant filed by her counsel, received on February 7, 2020;

Having regard to the defendant's submissions in reply filed by its counsel, received on February 21, 2020;

...

Having regard to the request formulated in the terms of its conclusions by the defendant to be heard by the

Litigation Division pursuant to Article 51 of the DPA's Internal Rules;

Having regard to the invitation to the hearing sent by the Litigation Chamber to the parties dated April 21, 2020;

Having regard to the hearing during the session of the Litigation Chamber of May 13, 2020 in the presence of counsel

of the plaintiff and of the plaintiff herself as well as of counsel for the defendant and the

Defendant's legal director;

Having regard to the minutes of the hearing;

Having regard to the comments made by the parties with regard to the minutes to which they were attached;

Having regard to the decision of the Litigation Chamber of June 18, 2020 to reopen the debates on the sole element

new communicated by the defendant with regard to its obligation to inform, namely the

defendant's GDPR information document.

Having regard to the conclusions filed for the complainant on June 25, 2020 and for the defendant on July 2, 2020

by their respective councils.

2. Facts and subject of the complaint

1.

The plaintiff practiced as head doctor and radiologist under

as a freelancer in the medical imaging department of a defendant's hospital.

2.

Several dysfunctions present within this medical imaging department have led to

the defendant to appoint Doctor Z as an external expert to write a report

explaining the causes of these malfunctions and proposing possible solutions.

A first 22-page report was thus drawn up by Doctor Z on January 19, 2018.

A second evaluation report from the same radiology department (37 pages this time) is then

written by Doctor Z, still commissioned by the defendant (hereafter Dr. Z's report). The

complainant, like many other doctors and staff members of the department, is heard

in the preparation of this report. This report dated June 3, 2018 is presented during a

meeting of the hospital's Standing Consultation Committee (CPC) on June 4, 2018.

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3.

During the month of August 2018, the defendant took the decision to revoke the

plaintiff for gross negligence. The complainant decides to challenge the validity of her dismissal in court.

Legal proceedings are thus launched before the Court by summons of January 14, 2019.

4.

On January 2, 2019, the complainant contacted the Respondent's Managing Director and formulated

the following request:

" Mr. Director General (…),

In accordance with the General Data Protection Regulation, I

would like to be able to see the personal data concerning me

and therefore have the report of Dr. [Z] containing the report of his mission

as well as its possible solutions, probably filed with the CPC on June 5, 2018 (or the

around that date).

I ask you to provide me with a copy, or if necessary to communicate to me the part

of the report that concerns me, in accordance with Article 15 § 3 of the aforementioned Rules. I do not have

unfortunately could not find the DPO [of the defendant] to address this request,

why I am contacting you. I hope to hear back from you as soon as possible.

quickly and before January 27 at the latest.

(….)”

5.

On January 25, 2019, the defendant refused to comply with the complainant's request,

arguing as follows:

" Dear […],

I follow up on your letter of January 2, 2019 which caught my full attention.

On the basis of European Union Regulation No. 2016/679 of April 27, 2016 on

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

personnel and the free circulation of this data, you ask to be able to “dispose of (…)

the report of Dr. [Z] containing the report of his mission as well as his possible solutions,

likely filed with the CPC on or around June 5, 2018."

However, I regret to inform you that this request cannot be satisfied since

that you do not justify either the existence of a processing of personal data or a

activity which would fall within the scope of Union law within the meaning of the scope

material application of article 2 of this regulation.

(…)"

By e-mail of January 25, the complainant reacted immediately to this refusal, contesting the

invoked exceptions to the material scope of the GDPR.

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6.

On February 20, 2019, the complainant submitted a request for mediation to the APD. In terms of

the complainant specifies in these terms: "I obviously do not claim the entire report,

I simply ask to be able to read the passage that evaluates me, my

skills and my management of the service, the 3 having been called into question following this report in July".

This mediation will not succeed and as mentioned in the retroacts of the procedure above, the 3

September 2019, the complainant agreed to have her initial request for mediation taken

the form of a complaint given the persistent refusal of the defendant to its request of the

January 2, 2019.

7.

In the operative part of her submissions, the complainant further requests that the Chamber

Litigation orders the defendant to communicate to it the minutes of the meeting of a CPC

which was held on July 11, 2018. The complainant states that she was unaware of the existence of this council and that

it is by reading a document produced in the context of the legal proceedings at the same time as the

communication of Dr. Z's report that she learned of its existence. However, it seems that Doctor Z would have

was appointed as medical coordinator on the occasion of this July 2018 board meeting. As soon as a

hospital service audit must legally be carried out by a chief medical officer (Royal Decree of 15

December 1987 implementing Articles 13 to 17 inclusive of the law on hospitals, coordinated by

Royal Decree of 7 August 1987), the question arises, according to the plaintiff, of the quality of Dr. Z as

time of writing the report and more generally therefore, of the lawfulness of the processing of

data operated in this context.

3. The hearing of May 13, 2020 before the Litigation Chamber

8.

The hearing which took place on May 13, 2020, in addition to the elements of facts and arguments

developed in the submissions previously filed by the parties, highlighted the elements

following:

- As to the Royal Decree of 15 December 1987 invoked by the plaintiff (see point 7 below

above), the defendant argues that its Article 6 refers to a prerogative of the chief medical officer. If the

chief medical officer observes that the proper functioning in terms of risk management and

patient safety within the service is compromised, he may decide to request an audit

medical. In this case, according to the defendant, it was not a question of health failure or

problem of quality of care or even patient safety, but indeed a problem of

management. According to her, it is necessary to distinguish, on the one hand, between the competence of the head of

(article 6/1 of the Royal Decree of 1987) and on the other hand the competence of the hospital manager

described by the law on hospitals when faced with a management problem such as

in the case that led to its decision to entrust Doctor Z with an evaluation mission of the

radiology department run by the complainant.

...

- As to the reason for which it spontaneously granted the request for production of the

disputed report on the basis of article 877 of the Judicial Code even though it had always

refused access to the data contained therein on the basis of Article 15 of the GDPR for

of the grounds invoked of confidentiality and respect due to copyright, the defendant

stated that since the request for communication was based on another basis

legal, she consented.

- As to the information provided at the material time to the complainant on the basis of Articles 13 and

14 of the GDPR and as regards the general policy of the defendant in terms of information to

with regard to doctors like the plaintiff to date, the defendant has stated that with regard to

concerns contract and appointed agents, a point appears in the Work Regulations or

in the administrative statute. On the other hand, the defendant specified that with regard to doctors,

this type of communication of information does not exist, to its knowledge, yet and only at

At the time of the events, there was, still to his knowledge, no information given to the complainant.

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The defendant indicated that it has an external Data Protection Officer (DPO).

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4. As to the competence of the Data Protection Authority, in particular of

the Litigation Chamber

9.

Pursuant to Article 4 § 1erLCA, the Data Protection Authority (APD) is

responsible for monitoring the data protection principles contained in the GDPR and other

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

staff.

10.

Pursuant to Article 33 § 1 LCA, the Litigation Chamber is the litigation body

administrative body of the DPA.1 It is seized of the complaints that the SPL transmits to it pursuant to article 62

§ 1st LCA, i.e. admissible complaints when, in accordance with article 60 paragraph 2 LCA, these

complaints are written in one of the national languages, contain a statement of the facts and the

indications necessary to identify the processing of personal data on which they

relate to and fall within the competence of the DPA.

1 The administrative nature of the litigation before the Litigation Chamber has been confirmed by the Court of Markets, jurisdictio

appeal of the decisions of the Litigation Chamber. See. in particular the judgment of 12 June 2019 of the Court of Appeal of Brus

19th chamber, market court section published on the APD website: https://www.autoriteprotectiondonnees.be/decisions-

de-la-cour-des-marches as well as decision 17/2020 of the Litigation Chamber.

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11.

In the context of the legal proceedings pending before the Tribunal which are continuing

in parallel with the proceedings before the DPA (see point 3 above), the complainant, by way of

conclusions, requested the production of the report of Doctor Z on the basis of article 877 of the Code

judicial. In a letter addressed to the Litigation Chamber on January 20, 2020, the defendant

indicates that on this basis, it does not oppose the production of this report. The defendant

continues by indicating that the report having been communicated in its entirety to the complainant, it

may be considered that the request of the latter formulated within the framework of the procedure before

ODA has become irrelevant.

12.

Notwithstanding the complainant's agreement to consider that the complaint has become moot,

the Litigation Chamber, during its meeting of January 28, 2020, decided to continue its examination.

Once seized, the Litigation Chamber is competent to control in complete independence, and

notwithstanding the withdrawal of his complaint by the complainant or the loss of its object, compliance with the GDPR

and ensure its effective application. In this case, notwithstanding the agreement of the parties to consider that

the complaint has become devoid of purpose, it remains competent to examine the legality of the reasons for the

refusal of the defendant to follow up on the exercise of the complainant's right of access at the time of the

facts. The finding that, during the examination of the complaint by the DPA, it has been satisfied at the request of the

complainant is not, on the one hand, of such a nature as to eliminate any possible prior breach in the

head of the defendant nor on the other hand, of such a nature, as a matter of principle, to deprive the competent bodies of

DPA, including the Litigation Chamber, for the exercise of their respective powers. Conversely, he

would be sufficient for data controllers to comply with requests to exercise their rights

by the persons concerned during the procedure to, in a way, be immunized for the

past breach invoked in support of the complaint filed. The effective control that must be exercised by any

supervisory authority, such as the DPA and in particular the Litigation Chamber, pursuant to articles

51 et seq. of the GDPR and Article 4 § 1 LCA unquestionably opposes this.

13.

As the Litigation Chamber has already had occasion to state2, data processing

data are operated in multiple sectors of activity, particularly in the professional context

as in the present case. The fact remains that the competence of ODA in general, and

of the Litigation Chamber in particular, is limited to monitoring compliance with the regulations

applicable to data processing, regardless of the sector of activity in which this processing

of data are involved. Its role is not to replace the courts of the judiciary in

the exercise of their skills in labor law or hospital law

especially.

2 See.

decision 03/2020 of

the Litigation Chamber published

on

the

site

Internet of

ODA:

https://www.autoriteprotectiondonnees.be/sites/privacycommission/files/documents/Decision_CC_03-2020ANO.pdf

...

 The extension of the complainant's request by way of conclusions and the reopening of debates

14.

As mentioned above in point 7, the complainant, by way of pleadings, requested that the Litigation Chamber orders that it be given access to the minutes of the CPC meeting of 11 July.

The defendant argues that such a request is not provided for by law and is inadmissible, the complainant being free, however, to submit a new complaint to the DPA. In the same sense, the defendant disputes the jurisdiction of the Litigation Division with regard to the grievance raised by way of conclusions by the complainant with regard to compliance with Articles 12, 13 and 14 of the GDPR.

15.

In its decision 17/2020, the Litigation Chamber stated that given the active role which may be his for the purpose of giving practical effect to the protection which persons must benefit from concerned, the Litigation Division may also take into account grievances developed subsequently by way of conclusion by the complainant, insofar as it concerns facts or legal arguments related to the alleged infringement of which it was seized by way of complaint, and in the respect for the rights of the defence.3 The Litigation Division overwhelmingly reminds general that the jurisdiction of the Litigation Chamber is not limited to grievances raised by the complainant.

In this case, the extension of the complainant's request is linked to grievances related to the request original statement and the defendant had the opportunity to react to it by way of submissions in reply of February 21, 2020 as well as by way of conclusions of July 2, 2020. The Litigation Chamber is therefore entitled to examine them in the context of this Decision.

Specifically, with respect to the defendant's argument that the original complaint does not

related only to the right of access, and that the question of information would only have been raised during the

last submissions of the applicant and during the hearing, the Litigation Chamber notes that this

duty to inform is inextricably linked to the exercise of their rights by the persons concerned.

It may therefore be justified for the Litigation Chamber to rule on this aspect, raised by the

defendant in the written proceedings.

In addition, the defendant in any event informed the Litigation Division, after the hearing,

its observations concerning its duty to inform the defendant, and the other

independent care providers. The Chamber has, moreover, taken cognizance of all the arguments

3

See.

more

particularly

the

point

28

of

the

Decision

17/2020:

https://www.autoriteprotectiondonnees.be/sites/privacycommission/files/documents/Decision_CC_17-2020_FR_.pdf

...

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of the parties submitted after the hearing and after reopening of the proceedings. The principle of the contradictory has

therefore been respected.

Finally, the defendant seems to dispute that the Litigation Chamber can decide to close the

debates. It is however obvious that, from a point of view of efficiency and functioning of the authorities

of data protection, it must be put an end to the exchange of arguments between the parties

so that the procedure can lead to a decision by the authority.

5. As to the reasons for the decision

5.1.

On the defendant's breach of its obligation to follow up on the exercise

the complainant's right of access (article 15 of the GDPR) in compliance with the terms of

GDPR Article 12

16.

In its capacity as data controller, the defendant is required to comply with the

data protection principles and must be able to demonstrate that these are complied with

(principle of responsibility – article 5.2. of the GDPR). It must also implement all the

necessary measures for this purpose (Article 24 of the GDPR).

17.

According to Article 15 § 1 of the GDPR, the data subject has the right to obtain

responsible for processing confirmation that personal data concerning him are

or are not processed. When this is the case, the data subject has the right to obtain access to the

said personal data as well as a series of information listed in Article 15 § 1 a) - h)

such as the purpose of the processing of his data, the possible recipients of his data as well as

only information relating to the existence of his rights, including that of requesting rectification or

the erasure of his data or that of filing a complaint with the supervisory authority of

data protection (DPA).

Pursuant to § 3 of Article 15 of the GDPR, the data subject also has the right to obtain

copy of the personal data which is the subject of the processing. § 4 of article 15 of the GDPR

provides that this right to copy may not infringe the rights and freedoms of others.

18.

Article 12 of the GDPR relating to the procedures for exercising their rights by persons

concerned provides in particular that the data controller must facilitate the exercise of

their rights by the data subject (Article 12 § 2 of the GDPR) and provide them with information on the

measures taken following his request as soon as possible and at the latest within one

months from its request (article 12 § 3 of the GDPR). When the data controller has not

not intend to follow up on the request, he must notify his refusal within one month

...

accompanied by the information that an appeal against this refusal may be lodged with the

the data protection supervisory authority (12 § 4 GDPR).

19.

The defendant does not dispute having, on January 25, 2019, refused to follow up on the

request for access made by the complainant in her email of January 2, 2019 (see above points

4-5).

20.

The Litigation Chamber will therefore examine in the following paragraphs the relevance

of this refusal on the part of the defendant.

5.1.1. As for the argument based on the lack of application of the GDPR

 As to the defendant's status as data controller

21.

The Litigation Chamber recalls that the application of Article 15 of the GDPR requires that the

request for access is sent to the data controller

22.

In its submissions, the defendant points out that it is “not the author of this report by

confidential nature written by an external independent expert [Doctor Z] (…) and “that it is not

granted that the [defendant] is “responsible” for data processing subject to the GDPR”

(pages 2-3 of the defendant's conclusions of February 21, 2020).

23.

The data controller is defined in article 4.7. of the GDPR as "the person

physical or legal entity, public authority, service or any other body which, alone or jointly

with others, determines the purposes and means of the processing".

In this case, by mandating Dr. Z, even as an independent expert, to carry out

evaluation of the hospital's radiology department, the defendant determined the purposes and means

of the treatment.

In its letter addressed to the DPA on July 29, 2019, the defendant sets out in this respect itself what

following :

"At the meeting of the Manager / Medical Council Consultation Committee on February 21, 2018, it

is decided by consensus to follow up on the recommendations of Professor [A] on the

plan for "living together" in the Department (doctors, technologists and secretaries) and

ask Doctor [Z] to carry out a medical support mission in order to organize

the best the Service.

...

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At the meeting of the Consultation Committee on April 18, 2018, it was decided by consensus to extend

the mission of doctor [Z] with a logic of presence within the Radiology Department and

hearing of the various protagonists.

Doctor [Z] proceeds to an additional report of his mission at the meeting of the

consultation of June 4, 2018 and various measures are then decided by consensus […]".

The fact that the defendant is not the author of the report but that it is doctor Z who is

the author is indifferent and irrelevant to the criterion for determining the ends and the means

processing from which the concept of data controller is defined.

24.

The Litigation Chamber concludes that the defendant is the data controller

data processed in the evaluation report of Dr Z in respect of which the complainant exercised her

right of access on the basis of Article 15 of the GDPR.

25.

The Litigation Division also recalls that, when seized of a request for the right of access such as

that of the complainant, the data controller is initially required to verify

the existence or not of processing(s) of personal data of the person requesting access (article

15 § 1 GDPR).

 As to the existence of personal data relating to the complainant

26.

In its reply of January 25, 2019 to the complainant, the defendant indicates

as specified in the statement of facts, that his request cannot be satisfied since the

plaintiff does not justify “neither the existence of a processing of personal data nor of a

activity which would fall within the scope of Union law within the meaning of the scope

material of article 2 of this regulation”.

In its conclusions, the defendant raises, as regards the presence of personal data of the

complainant, that “it was not a question of collecting information relating specifically [to the

complainant], to collect personal data about him or to assess aspects

personnel relating to his person but to carry out an evaluation of the functioning of the service

radiology as a whole » .4

The Litigation Chamber is of the opinion that the objective pursued by the report commissioned by the

defendant is irrelevant. The purpose of this report is not decisive. As soon as he

contains personal data relating to the complainant – data which has been processed under a

4 Page 4 of the defendant's reply submissions of February 21, 2020.

...

automated process (see below) – the latter is entitled to invoke the right of access conferred on it by the

GDPR.

27.

The defendant again wrongly maintains that Dr. Z's report constitutes an analysis which does not could not be subject to the right of access enshrined in data protection regulations.

In support of the Y.S judgment of the Court of Justice of the European Union (CJEU)5, the defendant argues that according to this judgment, the CJEU refused to extend the right of access to the legal analysis of a application for asylum since such an interpretation would not serve the purpose of the rules on data protection but would establish a right of access to administrative documents.

28.

The Litigation Chamber recalls that the notion of personal data includes any type of information: private (intimate), public, professional or commercial, objective or subjective information.

In a Nowak judgment6 subsequent to the Y.S judgment cited by the defendant, the Court clearly states that the notion of personal data covers both data resulting from objective elements, verifiable and questionable than subjective data that contains an evaluation or judgment related to the person concerned. This is the case for the annotations of an examination which reflect the opinion or the examiner's assessment of the individual performance of a candidate, for example, or of the employee evaluation data whether this evaluation is expressed in the form of points, a scale of values or through other evaluation parameters. Beyond the specific case (i.e. access to an examination), the judgment refers to any opinion or assessment concerning the person in question (point 24 judgment);

29.

By way of example, the Litigation Chamber notes the following passages in the report of the Dr Z:

-

The complainant was appointed in 2013 without being known internally either by the service or by

the institution and without a probationary period. On the other hand, she was well known in her circle.□

original radiological to have, say, a clear-cut character (page 12 of Dr. Z's report)□

-□

However already in 2013 and from his engagement, we note that an attempt at conciliation□

conducted by Dr B and Mrs C for a problem of refusal of endorsement and/or signature□

of the ROI by the complainant when this was part of its specifications at its□

commitment (page 12 of Dr. Z's report highlighted in bold)□

5 CJEU, Y.S judgment of July 17, 2014, aff. Attachments C-141/12 and C-372/12.□

6 Court of Justice of the European Union, 20 December 2017, Nowak judgment, C-434/16 §§ 33, 34 and 49.□

...□

-□

There is therefore an accumulation of difficulties vis-à-vis which the reaction of the Head of Department has not□

not been the right one in terms of support and empathy either towards the staff or their□

collaborators or referring general practitioners (pages 14 and 15 of Dr. Z's report)□

-□

There is also a lack of coordination and reciprocal consultation of the Head of Service□

doctor with the Chief technologist, which is sufficiently attested by the exchanges of letters□

(page 15 of Dr. Z's report)□

-□

The management principles followed by the complainant comply with the standards and are correct□

compared to what is expected of the head of the managing department: but they are vitiated by a□

lack of legal basis from the outset (page 20 of Dr. Z's report)□

-□

-□

The complainant's reports are superb, detailed, exhaustive and well-argued. She is□

visibly ready for external audit as part of Hospital Accreditation or□

Compulsory quality control of imaging services in Belgium (page 25 of Dr. Z's report)□

It seems obvious to the analysis that it unfortunately lacks a primordial quality and□

essential to the complainant: that of achieving consensus and showing empathy□

compared to his collaborators and his subordinates who can arouse their unfailing rallying□

(page 29 of Dr. Z's report).□

On reading the report, the Litigation Chamber notes, as evidenced by the excerpts quoted below□

above, that assessments or facts reported relating to the plaintiff (by name cited or□

identified as head of department) are set out on many pages.□

30.□

The Litigation Chamber also underlines a certain bad faith on the part of the□

defendant who defends herself by arguing that only a few passages of this report could□

possibly contain personal data concerning the complainant.7□

31.□

The Litigation Chamber concludes from the foregoing that the examination of Dr. Z's report demonstrates□

that unquestionably, personal data relating to the complainant and evaluating this□

last - was it in the more global context of the evaluation of the service at the head of which she worked -□

are actually dealt with there, which the defendant could not ignore.□

□ As to the existence of personal data processing subject to the GDPR□

7 Page 8 of the letter of July 29 from the defendant addressed to the SPF within the framework of the mediation conducted by th

for submissions on January 20, 2020).□

...□

32.□

Finally, the Litigation Division finds that the defendant also maintains in its□

conclusions that Dr. Z's report would not constitute automated processing within the meaning of Article□

4.2. of the GDPR nor would it constitute manual processing of data to be included in

A file. The processing of the complainant's data would therefore not fall within the scope

material application of the GDPR (article 2 of the GDPR).

33.

As for the existence of automated processing, the Litigation Chamber recalls that

qualified as "automated" any processing in which the information technology intervenes, such as

than the word processor used in computers. 8

34.

The Litigation Chamber concludes that the complainant's personal data processed

in Dr. Z's assessment report were indeed automated. Accordingly, the Chamber

Litigation does not examine the question of whether this processing constitutes processing

manuals of data called to appear in a file.

*

35.

In conclusion to this point 5.1.1., the Litigation Division finds that the complainant was

entitled to exercise its right of access to the defendant in its capacity as responsible for

processing with regard to personal data concerning him processed in an automated manner

in Dr. Z's report, pursuant to Article 15 of the GDPR.

5.1.2. As regards the obstacles invoked by the defendant to the exercise of the right of access of the

complainant as formulated by her

36.

In addition to the argument based on the material scope of the GDPR rejected by the Chambre

Disputed above (point 35), the defendant invokes several obstacles to the exercise of the right

the complainant's access as she would have formulated it.

37.

The defendant thus invokes the confidential nature of the report intended solely for the Committee

consultation manager / medical board of the hospital. She also argues that the

complainant would not justify authorization from the author of the report, a report protected by law

author. Finally, since the report is based on a series of individual interviews with doctors

and other members of the staff of the radiology department of the hospital, the defendant considers that a

transmission of this report would undermine the commitments made to the people interviewed

and would be likely to call into question the protection of the personal data of others.

8 See. F. Dumortier, note of observations: the law of December 8, 1992: an obstacle to the profession of private detective?, RTD

41/2010, p. 45 et seq. The definition of processing has not been modified (other than the addition of “structuring”) by the GDPR

(article 4.2 of the GDPR), this case law remains relevant even after the repeal of Directive 95/46/EC and the Law

of December 8, 1992.

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38.

The Litigation Chamber recalls that Article 15 § 4 of the GDPR limits the right to obtain

of a copy in the following terms: “the right to obtain a copy does not infringe the rights

and freedoms of others”. Recital 63 of the GDPR clarifies in this regard that "this right should not

infringe the rights and freedoms of others, including trade secrets or property

intellectual property, in particular copyright protecting the software. However, these considerations

should not lead to any communication of information to the data subject being refused (…). »

In other words, the balancing of the right to obtain a copy with the rights and freedoms

of others, cannot lead to the absence of any communication of information to the person concerned.

39.

The Litigation Division adds that Article 15 § 3 does not require a copy of the document

original is provided to the person concerned. Article 15 § 3 requires the controller to

provide a copy of the personal data processed to the data subject. This right to

obtaining a copy of the data does not entail the right for the person concerned to obtain a

copy of the original document containing this data since in some cases the communication of

this document could infringe the rights and freedoms of others (see Article 15 § 4 mentioned below).

above).

40.

The Litigation Division considers that none of the defendant's arguments withstands

analysis

 Regarding the allegedly confidential nature of Dr. Z's report, the Chamber

litigation takes note in this regard of Article 14.5 (d) of the GDPR, concerning the obligation

of information and not the right of access, which mentions the obligation of professional secrecy

regulated by Union law or the law of a Member State as an exception justifying

lack of information. Even supposing that this article could apply here by analogy,

quod non, the defendant does not put forward any legal element leading to the conclusion that this

report is indeed confidential.9 The argument of the latter cannot therefore convince

and be retained to refuse the complainant's right of access.

 Concerning the copyright protection of the report, even assuming that the

defendant is entitled to invoke the copyright of a third party on a document that it has

ordered to refuse the right of access, the Litigation Chamber notes the following:

-

The defendant provides no evidence that the expert author of the report

would oppose the communication of the latter outside the primary recipients. She

9 Apart from the defendant's consideration that the report would be "necessarily confidential".

...

had, since January 2019, plenty of time to ask the latter for his position

in this regard.

-

-

In accordance with the principle of accountability (articles 5.2. and 24 of the GDPR), it is up to the controller to develop internal procedures intended to allow effective exercise of their rights by the data subjects. It is also incumbent upon him, in application of article 25 of the GDPR, to integrate the necessary compliance with the rules of the GDPR upstream of its acts and procedures (for example, contractually ensuring the possibility of communicating a copy of the report if it does not hold the necessary rights). Failing this, it would suffice for a data controller to invoke copyright without other consideration, which Article 15 of the GDPR does not allow.

Finally, assuming that the right holder opposes in concreto the access request of the complainant, and that a balance of competing interests prevents communication of a copy, nothing prevented the defendant from organizing an on-site consultation of the document, not implying a copy and therefore an absence of any infringement of the right author.

 Regarding the fact that data relating to other doctors and members of the staff of the radiology department would be treated there (and in respect of which commitments of confidentiality would have been taken), the Litigation Chamber considers that the latter is irrelevant since the defendant can, in response to the request made by the complainant, communicate to the latter only the data processed which concern him to the exclusion of data relating to other doctors and staff members referred to in the report.

The Litigation Division further notes that within the framework of the existing judicial procedure between the parties, the report in question has been transmitted in its entirety to counsel for the opposing party, without the obstacles invoked by the defendant and mentioned above appearing to have constituted a reason for not granting the request for judicial production on the basis of article 877 of the Judicial Code..

41.

Regarding the defendant's argument based on the wording of the request of the

plaintiff and its (too) extensive nature, the Litigation Chamber admittedly notes that the plaintiff

had specified under the terms of its request of January 2, 2019 that it wished to be able to take

knowledge of the personal data concerning him and therefore have the

report by Dr. Z on the basis of Article 15 § 3 of the GDPR.

...

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42.

However, the formulation of a request for access or the exercise of any other right – even

incomplete or based on an erroneous provision or in support of a misunderstanding or

interpretation of the right invoked – cannot serve as a pretext for the data controller not to

provide a useful follow-up.

In other words, the defendant cannot take refuge behind the wording of the request for

the plaintiff for not giving it a useful effect and thus fulfilling its obligation to facilitate the exercise

of the rights of data subjects, in this case, the complainant's right of access (Article 12 § 2 of the

GDPR). Even assuming, quod non, that it would have been justified in relying on the limitation provided for in

§ 4 of Article 15 of the GDPR, the defendant, at the very least, could have complied with the request for

the complainant on the basis of Article 15 § 1 of the GDPR.

43.

The Litigation Chamber notes that the defendant also accuses the complainant of

to have exercised his right of access only at the time of the introduction of his legal proceedings contesting

dismissal as head of department, exploiting - still according to the defendant - the

data protection regulations to gain access to the

report of Dr. Z. This circumstance is in the eyes of the Litigation Chamber indifferent, the

complainant is free to access the data concerning her at any time.

44.

The defendant further invokes in terms of conclusions that the personal data that

would contain a few pages of Dr. Z's report would, in any event, be known to the

complainant, such as her position as head of department.

45.

The Litigation Division would like to point out that no exception comparable to that provided for in

Article 13 § 4 of the GDPR (absence of information obligation when, and insofar as, the

data subject already has his/her information) or Article 14 § 5 a) of the GDPR (absence

information to be provided in the event of indirect collection when the person concerned already has these

information) does not exist in Article 15 of the GDPR. The right of access allows the data subject to

ensure that no data concerning him is processed without his knowledge and constitutes a first step

towards the possible exercise (see below points 46-47) of its rights of rectification, erasure

or objection. The objective of the right of access therefore goes well beyond simply knowing the

processed data, reason why the circumstance that the processed data would become known to the

person concerned is indifferent. The defendant's argument demonstrates a poor

understanding of the right of access.

...

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46.

Finally, relying once again on Y.S. of the Court of Justice of the European Union10,

the defendant submits that the analysis or evaluation of the radiology department of a hospital by a

medical expert is not in itself susceptible to verification of its accuracy

by the person concerned and a rectification under the regulations on the protection

Datas. Therefore, there would be no reason to recognize the complainant's right of access to the report

by doctor Z.

47.

The Litigation Chamber considers that it is wrong for the defendant to appear thus

condition the exercise of the right of access to the possibility or the intention to rectify the data

personal data which would be accessed and/or a copy of which would be issued. In fact, the data

processed, as already recalled, may be subjective data and not necessarily

lend to the exercise of a right of rectification. More fundamentally, if it is, as already mentioned,

certainly the "front door" which allows the exercise of the other rights that the GDPR confers on the person

concerned, such as the right to rectification, the right of access is not conditioned by the possibility or the

wish of the data subject to exercise these other rights.

48.

The complainant indicates in her conclusions that it is not only Article 15 of the GDPR which has not

not been respected towards him. She also argues that Article 12 of the GDPR has been disregarded

since the defendant did not facilitate the exercise of its right of access and refrained from

respond after January 25, 2019.

49.

The Litigation Chamber notes that the defendant reacted to the request of January 2, 2019

of the complainant by her email of January 25, 2019, i.e. within the period of one month required by article 12

§ 3 GDPR. The defendant, on the other hand, refrained from reacting once again to the answer that

sent him the complainant in reaction to his refusal notified in this email of January 25, 2019. This

last lack of reaction does not constitute a breach of Article 12 § 3 of the GDPR.

50.

If the Litigation Division notes that the defendant reacted within the time limit prescribed by article

12 § 3 of the GDPR by responding for the first time on January 25, 2019, it nevertheless notes that the

defendant omitted, since it did not intend to respond to the plaintiff's request,

to inform the latter of the possibility of lodging a complaint with the DPA. The conditions

prescribed by Article 12 § 4 of the GDPR which must surround the exercise of the right of access do not therefore have

been respected.

*□

10 See footnote 5 above.□

...□

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51.□

In conclusion, in support of the preceding paragraphs, the Litigation Chamber concludes that□

the defendant did not comply with Articles 15 § 3 and 12 § 4 of the GDPR.□

5.2. As for the defendant's failure to fulfill its obligation to inform (Articles□

13 and 14 GDPR in conjunction with Article 12 GDPR□

52.□

Also for the first time in her submissions, the complainant notes the fact that no□

information concerning the collection and processing of data as part of the development of the□

Dr. Z's report was not communicated to him.□

53.□

Pursuant to Articles 13 and 14 of the GDPR, any person whose personal data□

personal are processed must, depending on whether the data is collected directly from them or from□

from third parties, to be informed of the elements listed in these articles (§§ 1 and 2)11. In case of direct collection of□

given to the person concerned, the latter will be informed both of the elements listed in § 1 and in□

§ 2 of article 13 of the GDPR, i.e.: the identity and contact details of the controller as well as□

only the contact details of the data protection officer, if any, the purposes of the processing□

as well as the legal basis thereof (when the processing is based on the legitimate interest of the□

controller, this interest must be specified), recipients or categories of□

recipients of the processing, the intention of the data controller to transfer the data outside□

of the European Economic Area, the retention period of the data, the rights conferred on it□

the GDPR, including the right to withdraw consent at any time and the right to file a□

complaint to the data protection supervisory authority (in this case the DPA), information□

on the question of whether the requirement to provide personal data is of a

regulatory or contractual and the consequences of their non-provision as well as the existence of a

automated decision-making including profiling, referred to in Article 22 of the GDPR. Bedroom

Contentious also recalls that in the event of direct collection (article 13 of the GDPR), no exception

is not planned.

54.

Article 14 §§ 1-2 lists elements which are similar taking into account however that

the hypothesis referred to in article 14 of the GDPR is that where data is not collected directly

with the person concerned but also with third parties.

11 In the guidelines that it devoted to the principle of transparency (point 13), the Group 29 states as follows: “(…) the

G29 position is that there is no difference between the status of disclosures under paragraph 1 and paragraph 1.

paragraph 2 of articles 13 and 14, respectively. All information contained in these paragraphs is of equal

importance and must be provided to the data subject”. The Litigation Chamber endorses this position.

...

55.

This information is, whether on the basis of Article 13 or Article 14 of the GDPR to

provide the data subject in accordance with the terms set out in Article 12 of the GDPR.

56.

During the hearing of May 13, 2020, the defendant indicated that at the material time,

no information had, to his knowledge, been provided to the complainant regarding the treatment of

data operated in the context of his professional relationship with the defendant. The defendant has

also explained that with regard to contract and appointed agents, a point appears in this

effect in the Work Rules or in the administrative statute. On the other hand, the defendant pointed out

that with regard to physicians such as the complainant, this type of communication of information did not exist, in his

knowledge, not yet but was being developed. The defendant has, in this regard, mentioned

the work of its data protection officer.

57.

Following the May 13, 2020 hearing, the defendant produced a document dated June 6

2018 for Independent Care Providers it works with (the document

defendant's GDPR information sheet). This document indicates that it pursues the objective of informing

the way in which the personal data of hospital employees are processed in the context of

the organization of the defendant's care and activities. He adds that this information process

falls under the GDPR. It was the communication of this document that justified the reopening

discussions already mentioned.

58.

The Litigation Chamber notes that this document was communicated to the service providers

independent care by e-mail of June 19, 2018. If the complainant should indeed have appeared in

the list of recipients of this e-mail, this communication however only took place after the

treatments carried out in the context of the drafting of the report by doctor Z in view of his report filed on 4

June 2018.

59.

However, article 13 of the GDPR specifies that it is at the time when the data is obtained from the

person concerned that the items of information mentioned above must be communicated to him

(Article 13 § 1 GDPR). Article 14 of the GDPR imposes information on the person

concerned within a reasonable time, and at the latest when the data is communicated for the

first time to another recipient. The report having been presented on June 4, 2018 in CPC, taking up

of the members of the Medical Council and the manager, of the hospital it is at the latest on this date that the

complainant should have received the information.

60.

Indeed, as the complainant points out, for the establishment of this report filed in CPC

on June 4, 2018, Dr. Z collected data partly directly from the complainant and partly

party from third parties, so that both Article 13 and Article 14 of the GDPR apply.

...

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61.

As the GDPR is directly applicable, these provisions were applicable from May 25

2018.

62.

Therefore, and since the defendant does not demonstrate in any way that information

would have been given prior to June 19, 2018 to the complainant, the Litigation Chamber concludes

that the defendant failed in its obligation to inform it.

63.

The Litigation Chamber recalls that an essential aspect of the principle of transparency

in light of Articles 12, 13 and 14 of the GDPR is that the data subject should be able

to determine in advance what the scope and consequences of the processing encompass in order not to

be caught off guard at a later stage as to how their personal data

have been used. The information should be concrete and reliable, it should not be

formulated in abstract or ambiguous terms or leave room for different interpretations. More

in particular, the purposes and legal bases of the processing of personal data

staff should be clear.

64.

As for the defendant's GDPR information document, the Litigation Chamber notes

its generally imprecise and incomplete character.

65.

This document contains, in the opinion of the Litigation Chamber, vague statements - without

sufficient granularity - which does not allow independent care providers - such as the

complainant - who are or were the recipients to foresee and clearly understand what

are the data processed, what are the processing operations, their purposes and the bases of the

intended treatment. In general, contrary to what the defendant claims, the fact

that no healthcare provider has requested an explanation with regard to this document

information is not such as to qualify the information given as adequate or even more so, as

compliant with GDPR requirements.

66.

The Litigation Division makes the comments below with regard to the compliance of this

document to Articles 12, 13 and 14 of the GDPR and therefore to the principle of transparency (Article 5 § 1 a)

GDPR).

67.

The Chamber recalls, with regard to the information relating to the purposes of the processing (Articles 13 § 1

c) and 14 § 1 c) of the GDPR) that as stated in recital 60 of the GDPR, the principle of processing

fair and transparent requires that the person concerned be informed of the existence of the operation of

processing and its purposes.

68.

The Litigation Chamber is therefore of the opinion that the purposes listed under the heading “Purposes of

processing of personal data” of the defendant’s GDPR information document should

...

be described more precisely with regard to the "other purposes", if necessary in

giving some examples. The main purposes resulting from the legal obligations of the

defendant should also be specified. The Litigation Chamber recalls that in addition

to establish the purpose of the processing in question, the relevant legal basis applied in execution of Article

6 GDPR must be communicated. The second paragraph of the section “Purpose of data processing

personal data” of the defendant’s GDPR information document is in this respect not

precise enough. As regards the consent invoked by the defendant in support of the

data processing for “other purposes”, the Litigation Chamber recalls that this

consent must be informed (article 4.11. of the GDPR).

69.

Finally, in the section “Categories of data processed”, the defendant does not exclude

process judicial data. The Litigation Chamber emphasizes in this respect that, insofar as

what the defendant describes as “judicial data” corresponds to the definition adopted by

article 10 of the GDPR, this article 10 and article 10 of the law of July 30, 2018 must be respected in

all their aspects (bases of legitimacy and guarantees)12.

70. As for the information relating to the categories of data processed (Article 14 § 1 d) of the GDPR),

the Litigation Division notes here again the lack of precision, in particular with regard to “other

data necessary for the performance of purposes determined by [the defendant] or imposed by the

law, such as judicial data" of the ""Categories of processed data" section of its

information document. At the very least, some examples could be given. Combined with

the absence of details on these “other purposes” (see points 67-68 above), the data subject

is left in complete vagueness which, in the potential case of judicial data, is all the more

more unacceptable.

12 Art. 10. § 1. Pursuant to Article 10 of the Regulation, the processing of personal data relating to

criminal convictions and criminal offenses or related security measures is carried out:

1° by natural persons or legal persons governed by public or private law provided that the management of

their own litigation requires it; Where

2° by lawyers or other legal advisers, insofar as the defense of their clients so requires; Where

3° by other persons where the processing is necessary for reasons of important public interest for the performance

tasks of general interest entrusted by or pursuant to a law, decree, ordinance or law of the European Union;

Where

4° for the needs of scientific, historical or statistical research or for archival purposes; Where

5° if the data subject has expressly authorized in writing the processing of this personal data for a

purpose or several specific purposes and whether their processing is limited to these purposes; Where

6° if the processing relates to personal data clearly made public by the data subject,

on its own initiative, for one or more specific purposes and if their processing is limited to these purposes.

§ 2. The controller and, where applicable, the processor draw up a list of the categories of persons, having

access to personal data with a description of their function in relation to the processing of the data concerned.

This list is made available to the competent supervisory authority. The controller and, where applicable, the

subcontractor ensure that the designated persons are bound, by a legal or statutory obligation, or by a

equivalent contractual provision, respecting the confidentiality of the data concerned.

...

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71. As for the information relating to “data transfers”, the Litigation Division notes

that in reality this section of the defendant's GDPR information document covers both the

categories of recipients of the processed data (Articles 13 § 1 e) and 14 § 1 e) of the GDPR) and the

any transfers within the meaning of Chapter V of the GDPR (Articles 13 § 1 f) and 14 § 1 f) of the GDPR). As to

to the listed recipients, the principle of transparency would also be more met here if a few

examples were added to the categories “public authority” and “other recipients”.

72. As regards the information relating to the retention period (Articles 13 § 2, a) and 14 § 2 a) of

GDPR), the Litigation Chamber is of the opinion that it must be formulated in such a way that the person

concerned can, at the very least, assess, depending on the situation in which it finds itself, what will be the

data retention period. The data controller cannot simply

generally state that personal data will be kept for as long as the

legitimate purpose of the processing so requires or in accordance with its legal obligations. If a duration

cannot be communicated, criteria allowing this evaluation by the person concerned

must be planned. Where appropriate, different storage periods should be mentioned for

the different categories of personal data and/or processing purposes.

73.

In this case, the Litigation Division finds that the information communicated by the

defendant (section “Storage periods”) limits itself to mentioning that “the duration of

retention of personal data of healthcare providers complies with legal obligations”.

No element is thus communicated enabling the data subject to assess the duration of the

retention of their data.

74.

A second paragraph adds that at the end of the retention period, "the data

personal data will be deleted within one year unless the storage is considered to be

important for the defense of the legitimate interests of the institution or the service provider or those of its

legal successors or if there is an agreement on the conservation between the service provider and

institution”.

75.

The Litigation Chamber is of the opinion that this paragraph should be clarified. The defendant does not

can, as a precaution, in the event that a dispute arises, keep all the data

processed beyond the period necessary to fulfill the purposes for which they are processed

without violating the minimization principle. On the other hand, the retention of data for the purposes of

defense in court is an admissible purpose as such, the duration of which will be based on the deadlines

prescription for example.

76. With regard to information relating to the exercise of their rights by healthcare providers

self-employed (“service provider’s rights” section of the GDPR information document of the

...

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defendant), the Litigation Chamber notes that the list of rights enjoyed by persons

concerned under the GDPR is not fully covered. Thus, the right to limit the

processing (Article 18 GDPR) and the right to data portability (Article 20 GDPR) are only

not mentioned. Since the defendant does not rule out basing certain processing operations on the

consent, the right to portability – applicable when data processing is based

on the consent or the contract - cannot be excluded from the outset. In the same sense, the right for the

provider to withdraw consent at any time is not mentioned (Article 7.3. of the

GDPR).

77.

As for the constituent elements of the right to information, as already mentioned, the person

concerned must receive all the information items listed in paragraphs 1 and 2 of the

articles 13 and 14 of the GDPR. It is therefore not sufficient to communicate to him - as currently planned

by the document - that it will receive information relating solely to the purposes of the

processing, categories of data processed, retention period, and categories of recipients and

data source.

78.

As for the procedure put in place for the exercise of their rights by persons

concerned, the Litigation Division is of the opinion that it does not comply with the requirements of Articles 12. 2

(facilitating the exercise of rights) and 12.3. (response time) of the GDPR.

79.

If it cannot be excluded that the response to the exercise of his rights by the data subject

sometimes requires talking to her, having to systematically go through an appointment

you as intended by the defendant is excessive and may be perceived as intimidating to some

and constitute an obstacle to the effective exercise of the rights conferred by the GDPR. An access request should

for example, it can be done by an e-mail sent directly to the data controller or to the

data protection officer via a dedicated email address.

80.

The Litigation Division also invites the defendant to verify whether the transmission of the

copy of the healthcare providers ID card is, as required under their document

GDPR information, systematically necessary for their identification or if other means

less intrusive credentials could not be used.

81.

The Litigation Chamber also considers that granting an appointment within 1

months is not equivalent to “provide the data subject with information on the measures taken” to

the follow-up to his request within 1 month (article 12.3. of the GDPR). In this regard, the Chamber

Litigation notes that for any question relating to data protection (including

complaints), independent care providers are invited to send an email to an address in the

...

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External DPO whereas for any exercise of their rights, they are invited to contact directly

to the data controller via another email address.

82.

If, as the Litigation Chamber understands, the defendant chooses to retain the

management of the exercise of their rights by in-house healthcare providers, the protection delegate

of the data should nevertheless, according to procedures to be defined by the defendant, be informed

to be able to carry out its missions as well as possible.

83.

In any event, the data subject should not be penalized in any way

whether it is for not having sent his request to the right address.

84.

The contact address of the Data Protection Authority or a link to its website

could usefully be added to the last paragraph of the human rights section

concerned, always with the aim of facilitating the exercise of their rights by the persons concerned.

85.

Finally, the Litigation Chamber notes that the information document does not include the

information required by Article 13 § 2 e) of the GDPR. This provision provides that when

personal data is collected from the data subject, it is important that

the latter also knows whether it is obliged to provide this personal data and whether

informed of the consequences to which it is exposed if it does not provide them. No information is

provided for in this aspect in the defendant's information document.

86.

In conclusion of the foregoing, the Litigation Chamber concludes that the document

Defendant's GDPR information sheet does not inform independent healthcare providers

in accordance with the requirements of Articles 13 and 14 of the GDPR, combined with Article 12 of the GDPR.

87.

As for the Data Protection Officer (hereinafter DPO), the Litigation Chamber

recalls that Article 38(2) of the GDPR requires the organization to assist its DPO by providing

the resources necessary to carry out [its] missions, as well as access to personal data

staff and processing operations, and allowing them to maintain their knowledge

specialized. In this regard, the Litigation Division is of the opinion that the following aspects, in particular,

must be considered:

- Active support of the DPO function by senior management (for example, at the

from the administration board);

- Sufficient time for the DPO to complete his tasks. This aspect is

particularly important when a DPO, whether internal or external to the organization, is

appointed on a part-time basis to exercise his function. In the absence of sufficient time allocated to the DPO

for the exercise of its tasks, conflicts of priorities could lead to the tasks

...

of the DPD are neglected. It is essential that the DPO can devote sufficient time

to its missions;

- Adequate support in terms of financial resources, infrastructure (premises,

facilities, equipment) and personnel, if any;

- An official communication of the appointment of the DPO to all staff in order to

ensure that its existence and function are known within the organization;

- Necessary access to other services, such as human resources, the legal department,

IT, security, etc., so that the DPO can receive the support, the

contributions and essential information from these other services;

- Continuous training;

- Given the size and structure of the organization, it is possible that it is necessary to implement

places a DPO team (a DPO and his staff). In such cases, the internal structure of

the team as well as the tasks and responsibilities of each of its members must be

clearly established. Similarly, when the function of the DPO is exercised by a service provider

external services, a team of people working on behalf of this entity can

perform, in practice, the missions of the DPO as a group, under the responsibility of a

designated primary contact person for the client.

88.

In general, the Litigation Chamber insists on the fact that the more the operations

treatment are complex or sensitive as is the case in this case given the quality

of the defendant and therefore of the very large volume of data (relating to health in particular)

processed, the greater the resources allocated to the DPO. The function of delegate to the

data protection must be able to be exercised effectively and benefit from resources

adequate with regard to the data processing carried out and the risks involved.

89.

Finally, without this aspect being the subject of the complaint leading to this decision, the

Litigation Chamber recalls that obviously, the defendant is also required to inform not

only all of its staff, regardless of their status (doctor, nursing staff and

administrative,…) but also the patients of the data processing carried out concerning them and this,

in accordance with the GDPR and other applicable legal provisions.

5.3. Regarding the breach of Article 6 of the GDPR

90.

Still in the terms of her conclusions, the complainant finally denounces the fact that an audit intended

to assess the quality of care implemented in a hospital environment - such as the work of Dr Z who has

led to the disputed report - must be carried out by the medical director (see points 7-8 above) . She

explains that this requirement is provided for in Article 6/1 of the Royal Decree of 15 December 1987 on

...

execution of Articles 13 to 17 inclusive of the Hospitals Act, coordinated by the Royal Decree of 7 August

1987. It denounces the fact that on the date of the completion of this audit which resulted in its report,

Doctor Z was not medical director but an external expert to whom the defendant had chosen to

entrust the mission of evaluation of the radiology department of the hospital.

91.

It is not for the Litigation Chamber to qualify Dr. Z's report with regard to

of hospital law and to conclude that it does or does not meet the audit criteria such as

defined by the aforementioned Royal Decree of 15 December 1987 (see point 13 above). This exam comes out of

jurisdiction of the Litigation Chamber. The Litigation Chamber does not recall it

unless all data processing must be lawful, i.e. it must not only be based on

on one of the bases of the lawfulness exhaustively listed in Article 6 § 1 of the GDPR – with the exception of Article

6 § 1 f) which does not apply to processing carried out by public authorities as defined in

article 5 of the law of July 30, 2018 in the execution of their missions - but must also respect

all the legal obligations for which the data controller is bound pursuant to Article

5 § 1 a) GDPR. In other words, the processing cannot contravene the law.

5.4. As for the request for production of the minutes of the CPC meeting of 11

July 2018 on the basis of Article 15 of the GDPR

92.

Finally, as recalled in the description of the subject of the complaint, the complainant

asks in favor of the operative part of its conclusions that the CPC minutes of July 11, 2018

be communicated to him. The complainant indicates that it was on this date that Doctor Z would have been appointed

as medical coordinator (see above).

93.

In the alternative, if this extension of the subject of the complaint should be considered admissible

by the Litigation Chamber, the defendant considers that, in the absence of indication of data to

personal nature concerning her by the complainant, her claim is unfounded.

94.

The Litigation Chamber considered that it was authorized to deal with this extension of the

request (see point 15 above).

95.

The Litigation Chamber refers to the criteria for the application of Article 15 detailed in the

this Decision to conclude that where personal data relating to the

complainant would appear in these minutes, a copy of them must be communicated to the

Corrective measures and sanctions

complainant.

6.

...

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96.

Under the terms of Article 100 LCA, the Litigation Chamber has the power to:

1° dismiss the complaint without follow-up;

2° order the dismissal;

3° order a suspension of the pronouncement;

4° to propose a transaction;

5° issue warnings or reprimands;

6° order to comply with requests from the data subject to exercise these 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 the processing to be brought into conformity;

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

data recipients;

11° order the withdrawal of accreditation from certification bodies;

12° to issue periodic penalty payments;

13° to impose administrative fines;

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

international;

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

data on file;

16° decide on a case-by-case basis to publish its decisions on the website of the Authority for the protection of

data.

97.

It is important to contextualize the breach of Article 15 § 3 in conjunction with Article 12 § 4 of a

part (right of access) as well as the breach of articles 12, 13 and 14 of the GDPR on the other hand (right to

information) in order to identify the most appropriate sanctions and/or corrective measures.

98.

As to the breach of Article 15 § 3 combined with Article 12 § 4 of the GDPR, the Chamber

Contentitieuse notes that obtaining a copy of the data is the major contribution of the GDPR in terms of

right of access. It must allow the strengthening of the control of the persons concerned over the

personal data concerning them. The informational self-determination of which the GDPR is imbued

finds in this new version of the right of access (including the right to obtain a copy) one

of its strongest expressions.

99.

The defendant is, in the eyes of the Litigation Chamber, guilty in this respect

of a serious breach. Regarding personal data related to the evaluation of a service

hospital at the head of which the complainant was (and evaluating her elsewhere), this breach is

all the more so.

...

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100.

By refusing to communicate data concerning her to the complainant, the defendant

not only deprived the complainant of the right conferred on her by article 15 of the GDPR but more broadly,

it undermined his informational autonomy by not allowing him to take

knowledge of these data or, where appropriate, to assert them in the context of the procedure

court that she had initiated and that the defendant was aware of or in any other context.

101.

Even though she had not communicated any information to the complainant in violation of the

articles 13 and 14 of the GDPR (see above), the defendant has also failed to comply with article 15 of the

GDPR at the time of the complainant's request to exercise her right of access.

102. As for the breach of Articles 12, 13 and 14 of the GDPR, the Litigation Chamber finds

that this is a serious breach. Lack of transparency and complete and adequate information

on the elements listed in Articles 13 and 14 of the GDPR with regard to the processing of their data,

combined with the breach of Article 12 §§ 2-3 of the GDPR compromises the exercise of their rights by

data subjects (such as the right of access, the right to rectification, the right of opposition or even

the right to lodge a complaint with the DPA) or even ends up depriving them of it.

103. As to the duration of this breach, the Litigation Division must note that there is

since May 25, 2018, date of entry into application of the GDPR. The Litigation Chamber recalls here

that two years separated the entry into force of the GDPR from its entry into force to allow

controllers to comply with their obligations, even if

a comparable information obligation existed pursuant to Article 9 of the Law of 8 December

1992 on the protection of privacy with regard to the processing of personal data

staff.

104.

The Litigation Chamber also notes the large number of people, including

personal data are processed by the defendant in the context of the relationship

professional – under any status whatsoever (certainly not all under independent status) -

that they have with her. During the hearing on May 13, 2020, the number of several thousand

of people, all statuses combined, was cited. It is important that everyone benefits from information

compliant with the processing of their data.

105.

Given the quality of the defendant, the Litigation Chamber is not, were these

breaches characterized as set out above, not authorized to impose a fine

administration. In view of the elements developed above specific to this case, the Chamber

Litigation considers that the facts found and the breaches of Articles 15 § 3 and 12 § 4 of a

part and Articles 12 §§ 2-3, 13 and 14 of the GDPR on the other hand, justify that as an effective sanction,

proportionate and dissuasive as provided for in Article 83 of the GDPR a reprimand (Article 100 § 1,

...

5° LCA) accompanied by compliance orders be pronounced against the defendant (100

§ 1, 6° LCA).

106.

Given the importance of transparency with regard to the decision-making process

and the decisions of the Litigation Chamber, this decision will be published on the website of

the Data Protection Authority by deleting the direct identification data

of the parties and persons cited, whether natural or legal.

FOR THESE REASONS,

THE LITIGATION CHAMBER

Decides, after deliberation

- To pronounce against the defendant a reprimand on the basis of article 100 §

1st, 5° ACL;

- To accompany this reprimand:

o An order to comply with the exercise of the complainant's right of access with regard to

of the minutes of the meeting of the OPC of July 11 insofar as these

would contain personal data relating to the complainant, and this on the

basis of Article 100 § 1, 6° LCA;

o An order for compliance of its data processing relating to the

independent healthcare providers with Articles 12, 13 and 14 of the GDPR in a

period of 3 months from the date of notification of this decision and this, on the basis of

Article 100 § 1, 9° LCA13. The defendant will inform the Litigation Chamber by

email to litigationchamber@apd-gba.be within the same 3-month period. The

non-production of the mandatory information or its non-compliance may, where

where appropriate, give rise to the opening of an initiative investigation by the protection authority

data, which may lead to a new decision by the Litigation Chamber

regarding the issue of mandatory information.

*

13 The sending of this decision constitutes notification.

...

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

markets within 30 days of its notification, with the Authority for the protection of

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given as a defendant.

(signed) Hielke Hijmans

President of the Litigation Chamber