Litigation Chamber

Decision on the merits 34/2022 of 10 March 2022

File number: DOS-2020-02237

Subject: Sending by the former employer of an email containing personal data

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

Chairman, and Messrs. Romain Robert and Christophe Boeraeve;

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);

Law of 30 July 2018 on the protection of natural persons with regard to data processing

of a personal nature;

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;

Look at the documents in the file.

made the following decision regarding:

The complainant:

Mrs. X, represented by Me Karen Rosier, hereinafter “the complainant”;

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The defendant: Y, represented by ‘Me. Marco Schoups and Me. Sara Cockx, hereinafter: "the defendant".

I. Facts and procedure

Decision on the merits 34/2022 - 2/20

1. On July 07, 2020, the complainant lodged a complaint with the Authority for the Protection of

given against the defendant.

The subject of the complaint concerns the communication by the data controller (former

employer) to third parties of personal data: private email address, new email address

professional, private home address and a personal letter.

The complaint raises non-compliance with the principles of the GDPR, in this case:

- The principle of finality;

- The principle of data minimization;

- The principle of integrity and confidentiality.

2. The Complaint also provides a statement of facts which may be summarized as follows. The

Complainant was at the time employed by the Defendant as a lawyer. She had as such

of a company vehicle with which she has committed, during private use of the vehicle, an

environmental offense in the municipality of (..) (illegal deposit of a bag next to a bubble at

glass). On January 28, 2019, a notice of violation was sent by the Sanctions Unit

municipal authorities of the Province of Flemish Brabant (hereinafter, the Sanctions Unit) to

the defendant since it is in his name that the vehicle is registered.

On receipt of this statement of offence, the defendant, in accordance with the internal procedure

usual, forwards the statement of offense to the complainant, asking her to follow up

administrative required.

It appears from the other documents in the file that, on February 5, 2019, the complainant sent a letter in

Dutch to the Sanctions Unit in which she presents herself in particular as the author of

the offence, while pleading his good faith and asking to be heard. On April 10, 2019, the Cell

penalty informs the complainant of its decision to impose an administrative fine of 80

euros. An invoice for this fine was sent to the complainant by the Municipality of (..) dated

April 23, 2019. The complainant settled this fine by bank transfer on May 11

2019. These elements were not known to the defendant at the material time.

On April 23, 2020, the defendant received an invoice from the municipality of (..) for an amount of 460

euros its clearly relating to the facts described above. The invoice is accompanied by a

extract from the register of minutes of the college of mayors and aldermen of the municipality of

(..) of a meeting of 03/16/2020, deciding on the imposition of the administrative fine. The

respondent, through its director, responds to this letter by email informing the

common ground that the complainant is the person responsible for this offence. The email in

Decision on the merits 34/2022 - 3/20

question is sent to three different addresses of the Municipality of (..), to three collaborators of the

defendant in copy as well as to the private email address and the new professional email address

of the complainant and is worded as follows:

“Geachte Mevrouw […],

Geachte Mevrouw […],

Ik kreeg deze morgen, via een scan als bijlage aan een email, Uw schrijven dd. 23/04/2020 – zie

jewellery. Wij zijn op dit ogenblik in telewerk en ik ga slechts sporadisch naar het kantoor. Ik antwood

u per mail om die schuldvordering ten stelligste te betwisten wat haar verhaalbaarheid op de Y

betreft.

De inbreuk werd gepleegd door onze voormalige excellent juridisch adviseur X , die reeds

maanden de Y heeft verlaten. Zij erkende de feiten in een brief die zij destijds naar het

Provinciebestuur Vlaams-Brabant richtte en die

ik

in mijn global Dropbox archieven

teruggevonden heb. U vindt deze brief als bijlage – ik heb er een vrije vertaling bijgevoegd.

Ik ben niet zeker dat zij dit schrijven effectief stuurde. Gezien de persoonlijke aard van de

overtreding cc. ik deze mail naar de persoon in kwestie (…) zodat zij voor een vlotte administratieve

afhandeling kan zorgen, waarvoor reeds dank.

Gelieve bijgevolg de schuldvordering rechtstreeks naar haar te sturen:

X

Addresses

Ik dank u daar reeds bij voorbaat om en verblijf inmiddels, met de meeste hoogachting."

3. The email contains as an attachment a draft letter from the complainant written in French in which

it acknowledges the facts (hereinafter, the draft letter or draft letter). As stated in the email

reproduced above, the defendant provides a free translation of this draft letter to the

Dutch. She specifies that she does not know if this letter was sent by the complainant to the municipality.

of (..).

4. On May 4, 2020 the complainant sent a first letter to her ex-employer (the defendant) by

electronically and by post. She explains her surprise to see the municipality contact directly

the defendant since the municipal administration would already be in possession of its

contact details and that the facts are a matter of his private life.

It asks the defendant to specify the legal basis of the processing as well as its purpose. She

also informs him of his intention to contact the Data Protection Authority.

Decision on the merits 34/2022 - 4/20

5. The Respondent's Director replied by email the same day asking the Complainant to de

please do the necessary urgently in order to avoid legal action against the

defendant.

6. On 5 May 2020, the complainant submitted a request for information to the DPA.

7. On June 9, 2020, the Frontline Service replied to the defendant, indicating that the facts

presented can be examined in relation to the following principles: purpose, minimization of

data, integrity and confidentiality. It also indicates that the data controller must

respond to requests to exercise rights within a month.

8. On June 15, 2020 the complainant sends a new letter by post and by email indicating

that she has not received a response to her first letter concerning questions relating to compliance with the

GDPR and asks the defendant to demonstrate to it that the principles of minimization,

purpose and integrity and confidentiality have been respected in this case.

9. On July 7, 2020, the complainant lodged a complaint with the Authority for the Protection of

given against the defendant.

10. On July 16, 2020 the defendant contacted the municipality of (..) to ask if the file could

be closed as far as it is concerned since the perpetrator of the offense has been identified.

11. On the same day, she sends an acknowledgment of receipt to the complainant for her letter of June 15, 2020.

12. On August 5, 2020, the Defendant responds to the Complainant's requests, formulated in these

letters of May 4 and June 15, 2021. She recalls in particular the context of the file and declares that

be based on the legitimate interest for the processing of the data, which has the purpose of defending itself by

in relation to the wrongfully directed prosecutions against him.

13. On July 29, 2020, the complaint was declared admissible by the Front Line Service on the basis of the

articles 58 and 60 of the LCA and the complaint is forwarded to the Litigation Chamber under article

62, § 1 of the LCA.

14. On October 19, 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.

15. On the same day, the parties concerned are informed by registered letter of the provisions such as

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, time limits for transmitting their conclusions.

The deadline for receipt of the defendant's submissions in response was set for 26

November 2020, that for the complainant's reply submissions on December 17, 2020 and

that for the conclusions in reply of the defendant on January 7, 2021.

Decision on the merits 34/2022 - 5/20

16. On October 28, 2020, the Respondent agrees to receive all communications relating to

the case electronically and expresses its intention to make use of the possibility of being heard,

this in accordance with Article 98 of the LCA. It also requests a copy of the file (art. 95, §2,

3° LCA), which was sent to him on October 29, 2020.

17. On November 26, 2020, the Litigation Chamber receives the submissions in response from the

defendant. The defendant indicates that there was indeed processing of personal data

complainant's staff, but considers that it was done in a manner that complies with the GDPR.

With regard to the lawfulness of the processing, the defendant claims the application of Article 6.1.c)

of the GDPR since the processing was necessary for compliance with a legal obligation. This obligation

finds its basis in article 4.11 of the police regulations of the municipality of (..), and in

Article 33.2 of the law of June 24, 2013 on municipal administrative sanctions. These two

articles are formulated in a similar way and allow the holder of a license plate

to prove, by any means of law or by any means, the identity of the driver at the time of the facts

objects of the offence. With regard to Article 33.2, it also indicates that the holder of

the plate is then required to communicate the identity of the driver.

The defendant also indicates that it bases itself on Article 10, §1, 1° of the GDPR since the processing

would be necessary for the management of its own litigation. She argues that an administrative fine

amounts to a criminal sanction.

The defendant also avails itself of the legitimate interest provided for in Article 6.1.f) of the GDPR since it

is obviously in his interest to identify the true perpetrator of the offense in order to prevent it from

this is not reproached to him.

With regard to the principle of purpose limitation, the defendant specifies that its Policy

of data protection provides that the personal data of the worker will be

in all cases erased after a period of 10 years, except with regard to the data which are

necessary for any ongoing disputes.

With regard to the principle of minimization, the defendant indicates that all the data

contained in the email were necessary in order to avoid any risk and any additional cost to the

parties involved. She considers that the complainant's name and address were necessary for
the municipality can send its mail to the person concerned. The email addresses of the
complainant, added in copy were also necessary since, due to teleworking due to the
COVID-19 pandemic, a transfer of the hard copy of the letter was not possible.
The use of the complainant's new professional email address is justified by the fact that
it appears in the defendant's database since the complainant is an employee
by a member organization of the defendant. The sending of the letter written by the complainant was
relevant in order to demonstrate, by any legal means, that the complainant being the author of the
the offence, since it acknowledged the facts therein.
Decision on the merits 34/2022 - 6/20
The defendant also specifies that the persons in copy of the email were the director
financial officer, the director of human resources, and the complainant's immediate superior.
With regard to integrity and confidentiality, the defendant highlights a series of measures
that are in place, including the existence of a GDPR-compliant privacy policy,
access and password management procedures.
The defendant asks the Litigation Chamber to declare the complaint unfounded.
18. On November 27, 2020, the complainant agrees to receive all communications relating to
the case electronically and expresses its intention to make use of the possibility of being heard,
this in accordance with Article 98 of the LCA. He also requests a copy of the file (art. 95, §2,
3° LCA), which is sent to him on December 1, 2020.
19. On December 16, 2020, the Litigation Chamber received the complainant's submissions in reply.
The complainant first emphasizes the private nature of the dispute between her and the municipality of (..).
As for the principle of purpose limitation, the complainant considers that it was not respected
on at least two aspects. The first concerns the use of his professional email address
current, which according to the conclusions of the defendant come from its database. This
data has, according to the complainant, been processed outside the purposes for which it was collected

since the defendant has this data only because the new employer of

the complainant is a member organization of the respondent and that a representative of its new

employer sits on a regional council of the defendant. The second concerns the use

of the draft letter written by the complainant and which would have been recorded on the server of the

defendant under a personal file. The complainant considers that this letter should never have

be dealt with by the defendant since it was related to a dispute of its own. She disputes

the fact that the defendant was able to keep this document precisely in the context of the management

of his dispute, since it was kept in a private file.

As for the principle of minimization, the plaintiff considers primarily that it was not

necessary for the defendant to respond to the municipality's mail. It would have been enough for him

to forward it to the complainant in accordance with usual internal practice.

In the alternative, the complainant considers that it was sufficient for the defendant to communicate the identity

of the complainant, as well as her home address. Are considered irrelevant and non-

necessary for the processing by the complainant of the mention of his status as a lawyer and the sending of the draft

of mail.

As for the violation of the principle of integrity and confidentiality, the complainant points out that according to the

Defendant's own privacy policy, managers are required to comply with the

confidentiality of workers' personal data. The complainant considers that this

principle is violated by the copying to three members of the staff of the defendant of its

Decision on the merits 34/2022 - 7/20

draft letter from his new business address. She believes that sending these three

people is not justified, any more than the sending to three different addresses of the Commune of (..)

(person signing the decision, finance department and general address).

It also considers that accessing the personal data of a former worker

to bring out a draft letter written for private purposes is akin to searching a space

personal digital more than a year after the end of his contract. She considers that this violates the principle

of integrity and confidentiality and the principles of lawfulness, loyalty and transparency.

20. On January 7, 2021, the Litigation Division receives the submissions in reply from the defendant. In addition to the elements already present in its conclusions, it stresses that, being given that the second invoice from the municipality of (..) is addressed to him by name, it is indeed involved in the litigation.

With regard to the minimum processing of data, it specifies that the data of all employees are kept for a period of 5 years, as indicated in its policy of confidentiality and that this period is justified by the civil and criminal prescription regimes.

The defendant corrects an assertion contained in its first pleadings. Indeed, she indicates that the draft letter is not from a Dropbox file of the managing director, but that it is provided to her by an employee who at the time had assisted the complainant in translating the letter into Dutch. The probative correspondence is included in the file1, as well as a statement on the honor signed by the general manager attesting to this.

In the alternative, the defendant lists mitigating circumstances and requests the suspension of the pronouncement or to be limited to a warning or a reprimand. In case of publication of the decision, it requests that the identity of the parties be made anonymous.

21. On October 15, 2021, the parties are informed that the hearing will take place on November 29, 2021.

22. On November 29, 2021, the parties are heard by the Litigation Chamber.

23. On January 17, 2022, the minutes of the hearing are submitted to the parties.

24. On January 22, 2022, the Litigation Division received a few remarks from the defendant relating to the minutes.

II. Motivation

II.1 As to the treatment and the facts

1 In this regard, the Litigation Division notes that the email exchange contains details from the colleague, by which she indicated that he did not know if this draft letter had ultimately been sent to the municipality.

25. An invoice from the municipality of (..) for illegal deposit is sent to the complainant's employer. the illegal deposit was made by the complainant using her company vehicle. The employer (defendant) asks the complainant to follow up on this fine. Almost a year later, the municipality returns a much higher bill for the same facts to the former employer (the complainant has meanwhile changed jobs). The former employer responded to the municipality by sending an email to three different addresses in the municipality (person signing the decision, finance department and general address), putting three of its collaborators (namely the financial director, the director of human resources and the former line manager of the complainant) and the complainant in copy. The email contains several personal data of the complainant:

- His home address
- His new professional email address
- His legal profession
- A draft letter that the complainant had planned to send to the municipality, containing other- others an admission of the facts (which the ex-employer says he found in his Dropbox archive. Affirmation that has been rectified in the conclusions, or the ex-employer says he received this letter from a former colleague of the complainant who had helped her translate it at the time).

It is this treatment that is the subject of the dispute.

26. Moreover, it appears from the documents in the file that the complainant had in fact correctly followed up on the first fine and paid it, which the employer was unaware of. It emerges also from the file that the complainant had sent well used the draft letter written with the help of his colleague and had sent it to the commune, modifying it slightly. This shipment was not no longer known to the employer, who did not know whether the draft letter had been used by the complainant. The reasons that led to the sending of the invoice for EUR 460 could not be clarified during the proceedings before the Litigation Chamber.

II.2 Regarding the violations examined by the Litigation Chamber

II.2.1 The principle of legality

Decision on the merits 34/2022 - 9/20

27. The principle of lawfulness found in Article 5.1.a) of the GDPR provides that any processing of personal data

of a personal nature must be based on one of the bases of lawfulness provided for in Article 6.1 of the GDPR. This

article is reproduced below:

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

filled:

has)

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

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

vs)

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

treatment is submitted;

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

or another natural person;

e) processing is necessary for the performance of a task carried out in the public interest or falling within the

the exercise of official authority vested in the controller;

f)

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

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

fundamentals of the data subject which require protection of personal data

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 execution of their missions. »

28. The defendant claims the application of three different bases of lawfulness (Article 6.1c),

GDPR Article 6.1.f) and Article 10). Firstly, it claims the application of Article 6.1.c) of the

GDPR, i.e. compliance with a legal obligation. This obligation is based on

article 4.11 of the police regulations of the municipality of (..), and in article 33.2 of the law of June 24

2013 relating to municipal administrative sanctions. These two articles are formulated

similar manner and allow the holder of a number plate to prove, by any

legal process or by any means the identity of the driver at the time of the facts that are the subject of the offence.

With regard to article 33.2, this also indicates that the holder of the plate is then

required to communicate the identity of the driver.

Decision on the merits 34/2022 - 10/20

29. For the Litigation Chamber, the two articles invoked do not in themselves contain an obligation

legal, but a legal authorization. However, according to the doctrine, Article 6.1.c) covers cases

of legal obligation and not mere permissions.

30. On this subject, the doctrine for example indicates that "What Article 6, paragraph 1, point c), does not cover

clearly not, it is the legal provisions which merely authorize or empower

subjects of law to do something. Such cases shall be classified as cases of article

6, paragraph 1, point e), if they allow public authorities to carry out activities which

result in the processing of data, or as cases of Article 6(1)(f), if

private parties are permitted to engage in certain data processing activities. »2

The Litigation Chamber subscribes to this interpretation and therefore considers that the person responsible for

In this case, the processing had to rely on Article 6.1.f) or another basis of lawfulness.

31. In this case, the defendant relies on the legitimate interest provided for in Article 6.1.f) of the GDPR

since he believes that it is in his interest to identify the real perpetrator of the offense in order to avoid

that this one is not reproached to him. The defendant also invokes the applicability of

GDPR Article 10. However, it emerges from this article that a basis of lawfulness provided for in Article 6.1

is necessary before the applicability of Article 10 can be considered. Bedroom

litigation will therefore examine the legality of the processing on the basis of Article 6.1.f) of the GDPR.

32. The case law of the Court of Justice of the European Union requires that recourse to Article 6.1.f) of the GDPR meets three cumulative conditions, "namely, first, the pursuit of an interest legitimate by the data controller or by the third party or third parties to whom the data is communicated, secondly, the necessity of the processing of personal data for the achievement of the legitimate interest pursued and, thirdly, the condition that the rights and fundamental freedoms of the person concerned by data protection do not prevail"3.

33. The controller must in other words demonstrate that:

1) the interests it pursues with the processing can be recognized as legitimate (the "test of purpose");

2) the envisaged processing is necessary to achieve those interests (the "necessity test"); and

3) the weighing of these interests against the fundamental interests, freedoms and rights of the data subjects weighs in favor of the controller or a third party (the "test of weighting").

2 L. Georgieva "Processing of personal data relating to criminal convictions and offences", in: Ch. Kuner, The EU General Data Protection Regulation (GDPR) (2020), p 333. Free translation.

3 Court of Justice of the European Union, C-13/16 (Rigas judgment), § 28.

34. As for the first condition (the finality test), the Litigation Chamber considers that the monitoring of administrative proceedings, offenses and fines clearly constitutes a legitimate interest on the part of the defendant. The latter has a legitimate interest when it wishes inform a sanctioning administrative authority that an offense has been committed, not by it same, but by one of its (ex)employees.

35. In order to fulfill the second condition, it must be demonstrated that the processing is necessary for the achievement of the aims pursued. More specifically, this means asking whether the same result cannot be achieved with other means, without data processing to

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

36. In this regard, the Litigation Chamber concludes that the complainant's identification data

are necessary to inform the municipality of the identity of the person responsible for the offence.

For this, the home address and possibly the personal email address are sufficient.

The defendant's professional email address is therefore not necessary. For which

concerns the status of the complainant as a lawyer, this is not necessary in relation to the purpose

of the treatment. As for the draft letter written by the complainant and containing an admission of facts,

this is not necessary to identify the person responsible for the offense since

it has already been identified in the email and by sending its contact details.

37. As for the sending to the three different email addresses of the municipality, the Litigation Chamber

considers that the sending to the person signing the decision is necessary as well as the sending to a

functional mailbox email address to ensure that the email is received by the

common. On the other hand, a sending to the general address of the municipality does not seem necessary.

38. The last point concerns the sending of the email in copy to three members of staff, namely the

chief financial officer, the director of human resources, and the complainant's former superior. The

Litigation Chamber considers that the sending to the financial director and the director of resources

human resources is justified by monitoring and internal organization considerations. Sending to the old

superior is not justified, since it is not related to the work and performance of the

the employee, who has since left the organization.

39. The processing is therefore necessary with regard to the personal email address, as well as

the home address of the complainant, as well as for some of the email addresses of the municipality

and two of the collaborators.

40. As for the third condition, that is to say, the balancing of the interests of the person responsible for

processing in relation to the interests, fundamental rights and freedoms of data subjects, the

Litigation Chamber considers that the complainant's identification data do not seem

pose no particular risk to their interests, fundamental rights and freedoms. Sending the project

of mail has previously been established as unnecessary by the Litigation Chamber. This

Decision on the merits 34/2022 - 12/20

the latter considers, superabundantly, that this sending of the complainant's draft letter violates

also the interests of the data subject.

41. Indeed, this draft letter was exchanged confidentially between the complainant and one of

her colleagues so that she can help her with proofreading and translating the draft letter. The

reuse of this letter by the complainant's former employer constitutes data processing

which was probably not foreseen by the latter.

The Litigation Chamber recalls in this regard that recital 47 of the GDPR contains in particular

The following sentences :

"In any event, the existence of a legitimate interest should be assessed

carefully, in particular to determine whether a data subject can reasonably

expect, at the time and in the context of the collection of personal data, that

that they are processed for a given purpose. Fundamental interests and rights

of the person concerned could, in particular, prevail over the interest of the person responsible for the

processing where personal data is processed in circumstances where the

data subjects do not reasonably expect further processing. »4

The Litigation Chamber also notes that this draft letter contained an admission by

the plaintiff and that the defendant transferred this draft letter to the Commune by being

fully aware of this fact. This transfer does constitute an attack on the interests of the

plaintiff since the defendant knowingly sent a draft letter containing a

confession when she did not know if the complainant had already admitted the offense to the authority

administration. In doing so, the defendant knew or should have known that it could put the

complainant in an indelicate situation in the event that the latter would have wanted to contest

the offense or adopt a different approach than that contained in the draft letter.

42. The Litigation Division therefore finds a violation of Article 6.1.f) and Article 5.1.a).

Next, the defendant also indicates that it bases itself on Article 10, §1, 1° of the Law of July 30

2018 (which refers to Article 10 of the GDPR) since the processing would be necessary for the management

of its own litigation. It is moving forward, relying on European and Belgian case law

that an administrative fine is equivalent to a criminal sanction.

The first question brought to the examination of the Litigation Division is therefore whether the

processing in question is a processing "of personal data relating to

criminal convictions and criminal offenses or related security measures". If such is

If so, the processing must then comply with the conditions of Article 10 of the GDPR. The text of this article

indicates in particular that any processing of this type of data must first take advantage of a

4It is the Chamber that highlights.

basis of lawfulness provided for in Article 6.1 of the GDPR. The Litigation Chamber has previously established

that part of the data processed in the email had been lawfully processed in contravention of

Article 6.1.f) of the GDPR.

43. The dispute in question concerns an administrative fine. Contrary to what the party claims

defendant, all administrative fines do not constitute penal sanctions. In order to

determine whether this fine constitutes a criminal offence, it is necessary to refer to the case law of

the European Court of Human Rights, which has established three relevant criteria in this regard5. The first

is the legal qualification of the offense in domestic law, the second the very nature of

the offense and the third the nature and degree of severity of the sanction that risks incurring.

44. The Court of Justice of the European Union also applies these criteria, which it summarizes from

following way:

"The first Engel criterion relates to the characterization of the offense in domestic law. The courtyard

Court of Human Rights does not, however, consider this criterion to be decisive, but

only as a starting point6.

Under the second Engel criterion, the European Court of Human Rights examines any

first of all, to whom is addressed a rule sanctioning a specific infraction. If a rule applies to

all citizens and not - as for example in disciplinary law - to a specific group

having a special status, this pleads in favor of the penal nature of the sanction7. In parallel,

the European Court of Human Rights relates to the objective of the sanction incurred under

of the penal provision. The penal character is rejected when the sanction tends only to

compensation for pecuniary damage. If, on the other hand, it aims at repression and prevention, it is

of a criminal sanction. Furthermore, in its most recent case-law, the European Court of

human rights examines the point of knowing whether the repression of the offense aims to protect

values and interests that normally fall within the sphere of protection of criminal law. These

elements must be assessed as a whole11.

5 See, in particular, Eur. D.H., Engel and others v. the Netherlands of 8 June 1976, Series A no. 22, § 80 to 82, as well as Zolot

Russia of 10 February 2009, application no. 14939/03, § 52 and 53)

6 Engel v. Netherlands (cited § 82).

7 Eur. D.H., Öztürk v. Germany of 21 February 1984, no. 8544/79, Series A no. 73, § 53, as well as Lauko v. Slovakia

September 2, 1998, Reports of Judgments and Decisions 1998-VI, no. 26138/95, § 58.

8 Eur. D.H., Jussila v. Finland of 23 November 2006, Reports of Judgments and Decisions 2006-XIII, no 73053/01, § 38.

9 See, among others, Eur. D. H., Zolotukhin v. Russia of 10 February 2009, not yet published in the Reports of Judgments and

decisions, no. 14939/03, § 55, referring to the Ezeh and Connors v. United Kingdom of 9 October 2003, Reports of Judgments a

2003-X, nos. 39665/98 and 40086/98, § 102 and 105, as well as Maresti v. Croatia, § 59.

10 Zolotukhin v. Russia (cited above, § 55) and Maresti v. Croatia, § 59.

11 Eur. D.H., Bendenoun v. France of 24 February 1994, no. 12547/86, Series A no. 284, § 47, as well as Ezeh and Connors v.

UK, § 103.

The third Engel criterion relates to the nature and severity of the penalty incurred12. In the presence of

custodial sentences, the criminal nature of the sanction is generally presumed and this

presumption can only be rebutted in exceptional circumstances13. Fines for

which a subsidiary penalty of imprisonment is incurred in the event of non-payment14 or which

leads to an entry in the criminal record plead, as a rule, also in the sense of

existence of criminal proceedings. »

The Litigation Chamber finds that the offense in question in this case is a

administrative fine (first criterion). This rule applies to all citizens in a manner

indeterminate, which argues in favor of the penal nature of the sanction (second criterion). The goal

of the fine is to sanction illegal deposits of garbage, which has a vocation of repression

and prevention. The purpose of this offense is to protect public health (third criterion).16

45. The Litigation Division therefore considers that the fine in question is indeed “criminal” in the

meaning of Article 6 of the European Convention on Human and Citizens' Rights. By dealing with

data aimed at identifying the complainant as responsible for this breach, the party

defendant can be considered as processing “personal data relating to

criminal convictions and offences” within the meaning of Article 10 of the GDPR, which entails its

applicability.

46. Article 10 of the GDPR is implemented by Article 10 of the law of 30 July 2018, which specifies in its

first paragraph,

the processing of personal data relating to

criminal convictions and criminal offenses or related security measures is

carried out: 1° by natural persons or by legal persons governed by public law or

private law insofar as the management of their own litigation so requires”.

47. This purpose coincides with the processing purpose claimed by the defendant. It

follows that the processing of data which has been partly considered lawful on the basis of Article

6.1.f) also complies with the requirements of Article 10 of the GDPR, implemented by Article 10 of

of the law of July 30, 2018. It should be noted that article 10 § 2 of the law of July 30, 2018 imposes

restrict the processing of this data to specific categories of persons in order to

which the processing forms part of the job description and which are bound by a

legal, statutory, contractual obligation equivalent to respecting the confidentiality of the

targeted data.

12 Zolotukhin v. Russia (cited above, § 56).

13 Engel and Others v. the Netherlands (cited above, § 82) as well as Ezeh and Connors v. United Kingdom (cited above, § 126

14 Eur. D.H., Zugic v. Croatia of 31 May 2011, not yet published in Reports of Judgments and Decisions, no. 3699/08, § 68.

15 Judgment Zugic v. Croatia (cited above, § 68).

16 These conclusions are not relevant to the role of the Litigation Chamber itself, and the possible criminal nature

sanctions imposed by it under Article 100 LCA, read in conjunction with Article 58.2 GDPR.

Decision on the merits 34/2022 - 15/20

48. The Respondent did not provide a list of these categories of persons to the Chamber.

contentious. The Litigation Chamber considers at first sight that it would seem logical that the

financial director and human resources director are included in these categories of

people. She doubts, however, that it is necessary for the former supervisor of the

complainant is there.

II.2.2 Limitation of purposes

49. The principle of purpose limitation is enshrined in Article 5.1.b) of the GDPR. It is reproduced below:

“1) The personal data must be:

[…]

b)

collected for specified, explicit and legitimate purposes, and not to be processed

subsequently in a manner incompatible with those purposes; further processing for the purposes

archives in the public interest, for scientific or historical research purposes or for

statistics is not considered, in accordance with Article 89(1), to be incompatible

with the initial purposes (limitation of purposes); »

50. It is up to the data controller to determine ex ante the purpose of the processing. The

Litigation Chamber has no indication that this was done by the defendant, but

understands from the file that the purpose is to "ensure the management of one's own dispute" by informing the
Municipality of (..) that the complainant was the perpetrator of the offense Violation of the principle of limitation
purposes is invoked by the complainant with regard to two different pieces of data. First to
with regard to his new professional email address. Then concerning the mail project of
response to the commune that she had shared with a colleague.

51. Regarding the use of the new professional email address, the defendant
indicates that it "appears logically in Y's database. Indeed, its new
employer is a member of Y.".

52. The Litigation Chamber therefore understands that the defendant obtained the new email address
Complainant's professional career after she left her job with the
defendant. It is only because the complainant's new employer is a member of the party
defendant that the latter has the new email address.

53. The Complainant's new email address was therefore obtained by the Respondent in the
framework of these association activities for the defense of the interests of its members and not within the framework
of its activities as employers. For the Litigation Chamber, the purpose of data collection
is distinct in each of these situations.

54. This distinction is well understood by the defendant, since it has a policy
of confidentiality intended for these workers and another intended for its members. It appears
clear that the complainant's new email address falls under the privacy policy
intended for members.

55. This privacy policy describes the purposes as follows:

56. For the Litigation Chamber, it is obvious that the formulation of “management and disputes and
Disputes" refers to any disputes and disputes between the defendant and the
affiliated companies. It does not refer to disputes that the defendant may have had
with an employee of an affiliated company in the context of a previous employment relationship.

57. The defendant's use of the complainant's new email address therefore constitutes

further processing of data which is regulated in article 6.4 of the GDPR, reproduced below:

“When processing for a purpose other than that for which the data was collected is not

not based on the consent of the data subject or on Union law or the right of a

Member State which constitutes a necessary and proportionate measure in a society

democratic to ensure the objectives referred to in Article 23(1), the person responsible for the

processing, in order to determine whether processing for another purpose is compatible with the purpose for

which the personal data was originally collected, takes into account, among

others:

has)

the possible existence of a link between the purposes for which the personal data

personal were collected and the purposes of the further processing envisaged;

b)

the context in which the personal data was collected, in particular

with regard to the relationship between the data subjects and the controller;

vs)

the nature of the personal data, in particular if the processing relates to

special categories of personal data, pursuant to Article 9, or if data

personal data relating to criminal convictions and offenses are processed, in

under section 10;

d)

the possible consequences of the further processing envisaged for

the people

concerned;

Decision on the merits 34/2022 - 17/20

e)

the existence of appropriate safeguards, which may include encryption or

pseudonymization”.

58. The defendant does not demonstrate at any time that one of the five conditions listed in

this article would have been fulfilled in this case. It therefore does not demonstrate that the data has been processed

subsequently in a lawful manner.

59.

With regard to the draft letter written for the attention of the municipality, it emerges from the

documents in the file that this letter had at the time been sent by the complainant to a colleague in order to

that the latter can help her to revise and translate the said letter. This shipment therefore took place between

complainant and one of her colleagues, confidentially. .

60. This data was therefore collected by the defendant from one of its employees.

In accordance with Article 5.1.b, data must be collected for specific purposes,

explicit and legitimate. In the present situation, the purpose of this collection was to obtain the letter

in order to "ensure the management of its own litigation" by informing the Municipality of (..) that the complainant was

the perpetrator of the offence. In this case, the Litigation Chamber considers that the collection by its

employer of a draft letter, exchanged by the complainant with one of her colleagues as

confidential, containing an admission of facts, for the purpose of transferring it to an administrative authority

sanctioning, constitutes an illegitimate purpose, especially since the defendant indicated

explicitly not knowing whether

the plaintiff had finally used this mail in these

communication with the municipality.

61. Therefore, the Litigation Chamber considers that Article 5.1.b has been violated.

II.2.3 Data minimization

62. According to the data minimization principle provided for in Article 5.1.c) of the GDPR, the data to be

personal character must be adequate, relevant and limited to what is necessary for the

with regard to the purposes for which they are processed. Recital 39 of the GDPR adds that "the

personal data should only be processed if the purpose of the processing cannot

be reasonably achieved by other means".

63. The Litigation Division first recalls that the purpose of the processing for the defendant

is "to ensure the management of its own dispute" by informing the Municipality of (..) that the complainant

was the perpetrator of the offence.

64. To this end, the communication of the identity of the complainant was adequate and relevant, as well as

than the communication of his private email address.

Decision on the merits 34/2022 - 18/20

65. The Litigation Chamber considers, however, that the new professional email address of the

plaintiff is in itself irrelevant for this purpose, the dispute being in no way related to her new job.

The same applies to the fact that the complainant is a lawyer, this information not being relevant in

the species.

66. With regard to the draft letter, the Litigation Chamber considers that this data does not

cannot be considered adequate for the achievement of the purpose, since it is a

draft letter containing confessions from the plaintiff, but of which the defendant

ignored the character finalized or not. In other words, by sending this letter to the Municipality of

(..), not knowing whether this confession, put in writing, had ultimately been finalized by the complainant and used

in these communications with the municipality, the defendant processed data that was not

not adequate.

67. The Litigation Division therefore finds a violation of Article 5.1.c) of the GDPR.

II.2.4 Integrity and confidentiality

68. The principle of integrity and confidentiality is anchored in Article 5, 1), f) of the GDPR, which is formulated

as follows: "Personal data must be processed in such a way as to guarantee

appropriate security of personal data, including protection against

unauthorized or unlawful processing and against the original loss, destruction or damage

accidentally, using appropriate technical or organizational measures (integrity and

privacy) ".

69. Recital 39 of the GDPR adds that “Personal data should be processed

in a manner that ensures appropriate security and confidentiality, including to prevent

unauthorized access to such data and to the equipment used for their processing as well as

unauthorized use of such data and equipment.

70. For the Litigation Chamber, three questions must be examined with regard to the

principle of integrity and confidentiality. Compliance with this principle arises in relation to the sending of the

mail project, compared to sending the email to three different addresses in the municipality and

finally in relation to the sending of copies to the three collaborators of the defendant.

71. With regard to the sending of the draft letter to the municipality, the Litigation Chamber refers

in point 41, paragraph 3, which states that the defendant had been warned of the fact that the project

of mail had been shared by the complainant with one of her colleagues in confidence. By

elsewhere, the defendant explicitly indicated when sending the email to the municipality,

that she did not know whether the complainant had finally made use of this mail or not.

72. On the basis of these elements, the Litigation Chamber considers that the defendant violated the

principle of confidentiality provided for in Article 5.1.f) of the GDPR, since the draft letter has not been

processed in a manner that ensures appropriate confidentiality and prevents unauthorized access to

data. This observation is reinforced by the fact that the draft letter in question contains an admission

on the part of the plaintiff, that the defendant transferred it to the municipality without worrying

whether the complainant had finally expressed this admission to the municipality.

73. The Litigation Division therefore finds a violation of Article 5.1.f).

74. The next point concerns the sending to three email addresses of the municipality, namely the address of the

person signing the decision to the municipality of (..), the finance department, but also to

a general address (...). The Litigation Division has no evidence to consider

that the transfer to these addresses constitutes a violation of the principle of integrity and confidentiality.

75. The same applies to the third point which concerns the sending of the email by sending a copy to

three employees of the defendant, namely the financial director, the director of resources

and the complainant's former supervisor.

III. Penalty and publication

76. Based on the above elements, the Litigation Chamber finds a violation of Article 5.1.a), lu

in conjunction with Article 6.1.f), Articles 5.1.b), 5.1.c), 5..1.f). She believes that the reprimand, to

namely the sanction provided for in Articles 100,§1, 5° of the LCA and 58.2.b) of the GDPR constitutes the sanction

most appropriate in this case.

77. The Litigation Division considers that the imposition of a fine, which is a sanction provided for

Article 100. §1, 13° LCA and Article 58.2.i) of the GDPR, is not necessary. She bases this

assessment on several elements. First of all, it appears from the file that the violations in

question were not made intentionally, but appear to be the result of an error

appreciation on the part of the data controller. Then, the Litigation Chamber

has no element allowing it to say that the violations are structural. At

On the contrary, the violations seem to be intimately linked to the specifics of the case.

78. The Litigation Division nevertheless regrets the conflicting turn taken by the case, which

could presumably have been avoided if the defendant had simply contacted the

complainant to ask if she had done the necessary follow-up on the first fine.

79. 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.

FOR THESE REASONS,

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

pursuant to Article 100,§1, 5° of the LCA, to impose a reprimand for the violation of Article 5.1.a)

read in conjunction with Article 6.1.f), and Articles 5.1.b), 5.1.c), 5..1.f) 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.

(Sé). Hielke Hijmans

President of the Litigation Chamber