

Litigation Chamber

Decision on the merits 63/2020 of

September 22, 2020

File number: DOS-2019-05675

Subject: **Complaint by X against Google** (removal of links/right to be forgotten)

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

Hijmans, chairman, and Messrs. Christophe Boeraeve and Jelle Stassijns, members;

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 creating the Data Protection Authority, hereinafter the LCA

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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;

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made the following decision regarding:

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the complainant: X□

the defendant□

: Google Belgium SA, Chaussée d'Etterbeek 180, 1040 Brussels□

;□

1. Facts and procedure□

1. On October 28, 2019, the complainant lodged a complaint with the Data Protection Authority□
given against the defendant.□

The subject of the complaint concerns the refusal of the request to delete the URLs appearing on□
"Google.be" and "Google.com" in the results after a search on the name of the□
complainant.□

2. On November 14, 2019, the complaint is declared admissible on the basis of articles 58 and 60 of the LCA□
and is sent to the Litigation Division under Article 62, § 1 of the LCA.□

3. On March 13, 2020, the Litigation Division decides, pursuant to Article 95, § 1, 1° and Article□
98 of the ACL, that the case can be dealt with on the merits.□

4. On the same date, the parties concerned are informed by registered letter of the provisions□
as set out in article 95, § 2 as well as in article 98 of the LCA. They are also informed□
under Article 99 of the LCA, deadlines for transmitting their conclusions. The deadline for□
the receipt of the respondent's submissions in response was set for April 24, 2020, that for the□
submissions in reply of the complainant on May 8, 2020 and that for the submissions in reply of the□
defendant as of May 22, 2020.□

5. On March 25, 2020, the defendant informs the Litigation Chamber that he wishes to receive a copy□
Exhibit 2 of the file (art. 95, § 2, 3° of the LCA), which was sent to him on March 26, 2020. The□
Respondent also indicates that it wishes all communications in this case to be□
electronically, that he will submit submissions within the time limits set by the Chamber□
Litigation and that he also wishes to be heard.□

6. On April 2, 2020, the complainant also informed the Litigation Chamber that he preferred the communication by electronic means and that he also wishes to be heard.

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7. On May 5, 2020, the Litigation Chamber was notified by the plaintiff of his wish to waive to its complaint against the defendant, since the URLs which were the subject of the complaint were no longer available through Google Search. According to the complainant, the complaint therefore became moot, so that there is no basis for continuing the procedure.

8. On May 12, 2020, Respondent confirms that it has removed from Google Search the URLs that were the subject of the complaint, that he accepted the withdrawal of the complaint by the defendant and that, in view of this withdrawal there is no longer any basis for pursuing the procedure.

9. The Litigation Chamber receives neither from the plaintiff nor from the defendant any conclusions containing means of defense within the time limits set by the Litigation Chamber.

10. On August 3, 2020, the Litigation Chamber sent a letter to the parties in order to find out what the reasons underlying the decision to proceed with the removal of the URLs in question, while the respondent had initially refused to accede to the request to that effect by the complainant.

11. On September 4, 2020, the defendant informed the Litigation Chamber of the reason for the deletion of URLs, namely the reconsideration of all the elements of this case by the removal team of the respondent. It is further stated that all parties to the case, including the Complainant, do not wish to proceed further.

12. On September 4, 2020, the complainant also addressed the Litigation Chamber in his communication that the defendant has complied with its request for erasure and that it does not wish to pursue this case.

2. Legal basis

Article 12.4 GDPR

4. If the data controller does not comply with the request made by the person concerned, he informs the latter without delay and at the latest within 1 month from the

receipt of the request for the reasons for its inaction and the possibility of lodging a complaint with
of a supervisory authority and to lodge a judicial appeal.

GDPR Article 17

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1. The data subject has the right to obtain from the controller the erasure, within the
as soon as possible, of personal data concerning him and the controller has
the obligation to erase this personal data as soon as possible, when one of the
following reasons apply:

a) the personal data are no longer necessary in relation to the purposes for which
it has been collected or otherwise processed;
b) the data subject withdraws the consent on which the processing is based, in accordance with
Article 6(1)(a) or Article 9(2)(a) and there is no other
legal basis for processing;

c) the data subject objects to the processing pursuant to Article 21(1) and there is no
no overriding legitimate grounds for the processing, or the data subject objects to the processing
pursuant to Article 21, paragraph 2;

d) the personal data has been unlawfully processed;

e) the personal data must be erased to comply with a legal obligation which
is provided for by Union law or by the law of the Member State to which the controller
is submitted;

f) the personal data was collected in the context of the company's service offer
information referred to in Article 8(1).

2. When he has made the personal data public and is required to delete them in
pursuant to paragraph 1, the controller, taking into account the available technologies and the
implementation costs, takes reasonable measures, including technical ones, to inform
the data controllers who process this personal data that the person

concerned has requested the erasure by these data controllers of any link to this data

of a personal nature, or any copy or reproduction thereof.

3. Paragraphs 1 and 2 do not apply insofar as this processing is necessary:

(a) the exercise of the right to freedom of expression and information;

b) to comply with a legal obligation which requires the processing provided for by Union law or by

the law of the Member State to which the controller is subject, or to perform a task

in the public interest or falling within the exercise of official authority vested in the person responsible for the

processing;

c) for reasons of public interest in the field of public health, in accordance with Article 9,

paragraph 2, points (h) and (i), as well as Article 9(3);

(d) for archival purposes in the public interest, for scientific or historical research purposes or

for statistical purposes in accordance with Article 89(1), insofar as the right referred to in

paragraph 1 is likely to render impossible or seriously jeopardize the achievement of the

purposes of said processing; Where

e) the establishment, exercise or defense of legal claims.

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3. Motivation

13. The Litigation Chamber took note of the complaint in which the plaintiff asserted that

the defendant refused to accede to the request to delete the URLs which appeared in the

search results on "Google.be" and "Google.com" after a search on the name of the

complainant and which referred to an alleged conviction of the complainant in another country for

money laundering and embezzlement of company funds, when there would have been no

conviction for such offences. Following the complainant's initial request to remove the URLs in

question, the Respondent requested additional information regarding the case in order to

to be able to assess the request. The defendant then decided not to pursue the request

removal of URLs.

14. During the procedure before the Litigation Chamber, the parties consult each other,□
without involving the Litigation Chamber, and then inform it that an agreement has been reached, due to the fact□
that the URLs that were the subject of the complaint are no longer available through Google Search.□
15. Although the complainant asserts that his complaint has become moot, the Litigation Chamber□
decides to pursue the examination of the complaint.□
16. In general, the Litigation Chamber draws attention to the following.□
First of all, once seized, the Litigation Chamber is empowered to examine compliance with the GDPR□
and to ensure its effective application in complete independence, despite the fact that the complaint has been□
withdrawn by the complainant or has become irrelevant.□
17. As explained in its decision 17/2020, the Litigation Chamber is an organ of the DPA, created□
under Article 4(1) of the ACL, enjoying a certain autonomy within the DPA and taking□
its decisions independently. The APD is the Belgian authority responsible for monitoring the□
compliance with the GDPR within the meaning of Article 8 of the Charter of Fundamental Rights of the European Union,□
of Article 16 of the Treaty on the Functioning of the European Union and Article 51 of the GDPR.□
This control by the DPA and its Litigation Chamber is an essential element for the protection of□
individuals when processing personal data, as more specifically organized□
by the GDPR.□
18. According to Articles 51.1, 51.2 and 52.1 of the GDPR, Member States must indeed charge□
one or more independent authorities to monitor the application of the GDPR in order to protect the□
fundamental rights and freedoms of natural persons with regard to the processing and to facilitate the□
free flow of personal data within the Union. These supervisory authorities must□
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exercise their powers with a view to the effective application of European law in the field of□
data protection, including GDPR. Ensuring the usefulness of the effect of European law is one□
of the main tasks of Member State authorities under European Union law.1□
19. They must allow the exercise of fundamental data protection rights□

of a personal nature. To this end, supervisors should play an active role through
the tasks and powers conferred on them by Articles 57 and 58 of the GDPR. In application
of Article 57.2 of the GDPR, each supervisory authority must "facilitate" the lodging of complaints
by a data subject or by an organization. It is therefore logical that the examination of these
complaints must make it possible to exercise rights and contribute to improving the control of their
own personal data by citizens.

20. This is developed in national legislation in the ACL. In this regard, the Market Court has
underlined that under Belgian law, the DPA (and a fortiori the Litigation Chamber) must be considered as
an administrative authority and not as a judicial body.

21. In summary, the review by the Litigation Chamber is not primarily intended to settle disputes
between parties, but it is one of the instruments available to ODA to ensure compliance with
data protection rules, in accordance with the provisions of the European treaties,
GDPR and LCA.

22. If a complaint is lodged and is then transmitted for examination to the Litigation Chamber in
As long as the complaint is admissible, the Litigation Chamber must assess whether the facts related constitute a
infringement of one of the legal provisions compliance with which is subject to control by the APD 2. This
monitoring also extends to the assessment of infringements which have (presumably) ceased
time of examination by the Litigation Chamber.

23. In relation to the present case, this means that:

Although the parties reached an agreement following which the complaint would have become
object, the Litigation Division nevertheless remains authorized to examine the legality of the grounds for
refusal, as they stood at the time of the facts, on the part of the defendant, in order to give
following the complainant's exercise of his right to erasure.

1 See Koen Lenaerts, Piet Van Nuffel, *Europees recht* (6th edition), Intersentia, 2017, pp. 95-100, and more precisely about
data protection authorities, Hielke Hijmans, *The European Union as Guardian of Internet Privacy*, Springer 2016,
Chapter 7.

2 See also in this regard: Decision 17/2020 of the Litigation Chamber, point 27.□

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24. The simple observation that during the proceedings before the Litigation Division, the defendant□
nevertheless followed up on the complainant's request is not such as to lift any violation that□
could have been committed previously by the defendant on the one hand and is not such as to deprive□
the competent bodies of the Data Protection Authority, including the Litigation Chamber,□
of the exercise of their respective competences on the other hand.□

25. Otherwise, it would be sufficient for data controllers not to respond to requests□
exercise of the rights of the persons concerned only at the stage of the procedure to be thus□
exempted for any prior violation, as set forth in the complaint. The effective control that□
any supervisory authority, such as the Data Protection Authority and in particular the□
Litigation Chamber, as explained above, must unquestionably oppose it.□

26. In this case, the Litigation Division did not receive from the parties either submissions or annexes□
related information in order to allow it to examine the facts giving rise to the complaint, taking into account the□
legal and administrative provisions as well as case law and doctrine. Bedroom□
Contentious did not request an investigation from the Inspection Department either, in accordance with Article□
94, 1° of the LCA, within the 30-day period provided for this purpose (article 96, § 1 of the LCA).□

27. In the absence of factual elements in this particular file, it is impossible for the Chamber□
Litigation to exercise effectively the task of control assigned to it. She is of course□
authorized to examine possible infringements occurring in other cases which would be□
submitted for consideration and in which the parties would reach an agreement. She reserves□
also the right to examine, if necessary, the content of such an agreement and also to verify by□
example if a complainant is put under pressure to waive the right to complain, guaranteed□
to Article 77 of the GDPR.□

28. On the basis of the elements of the file, the Litigation Chamber can only arrive at the□
finding that the Respondent nevertheless complied with the Complainant's request to proceed with□

the erasure of the URLs that are the subject of the complaint and concerning data relating to the complainant.□

Although there may have been a violation at the time of the complainant's initial application to the□

respondent to proceed with the erasure and the respondent's subsequent refusal to do so and□

to thus delete the URLs concerned, the Litigation Chamber cannot establish whether this refusal was□

justified or not to then determine if it was a question of an infringement of the GDPR.□

29. The Litigation Chamber therefore decides to close the present complaint without further action, for lack of elements□

factual.□

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30. Given the importance of transparency regarding the decision-making process of the Chamber□

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 complainant□

are communicated directly. Given the importance of the Google search engine for a□

very large number of Internet users and the fact that in one way or another, links are taken□

in the Google search engine to a considerable proportion of people residing in□

Belgium, the name of the defendant is on the other hand communicated.□

FOR THESE REASONS,□

the Litigation Chamber of the Data Protection Authority decides, after deliberation, pursuant to□

of article 100, § 1, 1° of the LCA, to **close the present complaint without further action**. On the basis of□

information currently available to the Litigation Chamber, it considers to date that there is no□

therefore not possible to follow up on the complaint.□

Under article 108, § 1 of the LCA, this decision may be appealed within a period of□

thirty days, from the notification, to the Court of Markets, with the Authority for the Protection of□

given as defendant.□

(Sr.) Hielke Hijmans□

President of the Litigation Chamber□