Litigation Chamber

Decision on the merits 12/2023 of 16 February 2023

File number: DOS-2020-05658

Subject: Complaint relating to the transfer of letters containing personal data
personnel by the Requests and Social Affairs department of the King's Cabinet at
government of the German-speaking Community

The Litigation Chamber of the Data Protection Authority, made up of Mr. Hielke
Hijmans, chairman, and Messrs. Yves Poullet and Christophe Boeraeve, 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
to 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
ACL);

Having regard to the internal regulations as approved by the House of Representatives on 20
December 2018 and published in the Belgian Official Gazette on January 15, 2019;

Considering the documents in the file;

Made the following decision regarding:

The complainant :

X, hereinafter "the plaintiff"

The defendant: Requests and Social Affairs Department of the King's Cabinet, Royal Palace, rue
Brederode 16, 1000 Brussels, represented by Me F. Keuleneer, whose firm
is located rue de l'association 28, 1000 Brussels, hereinafter: "the defendant"

I. Facts and procedure

1.

On November 19, 2020, the complainant filed a complaint with the Protection Authority
data against the defendant. This complaint was filed in German.

2.

The subject of the complaint as set out in the complaint form submitted to the DPA concerns three
letters (respectively of February 5, 2018, September 13, 2018 and July 5, 2019) sent
by the plaintiff to the King, containing in particular personal data. The object of
these letters is to seek the support of the King in the context of the dispute between the plaintiff (and his
mother, Mrs Z) and the Agency (…) (…) as well as the Government of the Community
German-speaking from Belgium. The complainant explains the dispute from his point of view, and
indicates that the Government did not respond to a request for information from him,
nor to a decision of the Council of State of April 14, 2016. The letters addressed to the King were
transferred by the Requests and Social Affairs Service of the King's Cabinet to the government
of the German-speaking Community, which is the subject of the present case. When
proceedings before the Litigation Chamber1, it was agreed to exclude from the debates the two
first letters sent by the complainant to the defendant (see point 21), and not to retain
than the third, that of July 5, 2019.

3.

The complainant raises, in the complaint form, the fact that these treatments would have
place without basis of lawfulness. Following an email from the Front Line Service (SPL) of the APD
informing the complainant that the processing description box in the complaint form
complaint received was incomplete, the complainant returned an email on December 7, 2020 in
explaining his grievances in more detail. He also argues that the defendant would not have done
following the request to exercise his right of access (article 15 GDPR), and that he would not have
not answered his question as to what happened to the personal data
transferred to the government of the German-speaking Community. The plaintiff alleges

also to the defendant that she would not have given him information on his rights within the meaning of the GDPR. He adds that the defendant violated its obligation of professional secrecy to which administration would be held.

4.

On October 28, 2021, the complaint was declared admissible by the Front Line Service on the basis of Articles 58 and 60 of the LCA and the complaint is forwarded to the Litigation Chamber under article 62, § 1 of the LCA.

5.

On July 11, 2022, the Litigation Chamber decides, pursuant to Article 95, § 1, 1° and article 98 of the LCA, that the case can be dealt with on the merits.

6.

On July 11, 2022, the parties concerned are informed by registered mail of the provisions as set out in article 95, § 2 as well as in article 98 of the LCA. They are

1 Point “C.24” conclusions of the complainant, and as confirmed during the hearing

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

For findings relating to the subject of the complaint, the deadline for receipt of conclusions in response of the defendant was set for September 5, 2022, that for the conclusions in reply of the complainant on September 26, 2022 and finally that for the Defendant's reply submissions dated October 17, 2022.

7.

On July 27, 2022, the defendant requests a copy of the file (art. 95, §2, 3° LCA), which is transmitted to him on August 1, 2022.

8.

On July 27, 2022, the complainant indicates that in the event that he sees himself disadvantaged at the level

of the procedure before the Litigation Chamber, in particular if the defendant appeals
to a lawyer, in view of the costs that representation by counsel would cause him, he plans to
withdraw his complaint.

9.

On July 28, 2022, the Complainant again expressed his frustration and opposition to the
that the defendant is represented by a lawyer, and indicates that he feels aggrieved in his
rights insofar as he is not represented by a lawyer.

10. On July 29, 2022, the Litigation Chamber replied to the complainant that he was not obliged to
file legal submissions or respond with legal arguments to
conclusions of the defendant and that it is free to present its point of view in a
single letter. It also recalls that he can request a hearing during which
he will be able to present his point of view or underline important aspects, after the expiration of the
deadline for filing conclusions, and that the Litigation Chamber is an impartial body whose
the mission is to ensure that the GDPR and the rights of data subjects are
respected.

11. On October 17, 2022, the defendant expressed its intention to have recourse to the possibility
to be heard, in accordance with article 98 of the LCA.

12. On September 5, 2022, the Litigation Chamber receives the submissions in response from the
defendant.

13. On September 23, 2022, the Litigation Chamber receives the submissions in reply (in
German) of the complainant.

14. On October 17, 2022, the Litigation Chamber receives the submissions in reply from
of the defendant. These conclusions reproduce in full the first conclusions
filed and this without substantial addition and conclude that there is no breach of the
GDPR on its own.

15. On December 7, 2022, the parties are informed that the hearing will take place on January 25

16. The parties were informed in the letter of invitation to the hearing that in accordance with the language policy applied by the Litigation Chamber, the procedure is in French.

The complainant can nevertheless express himself in German, and the decision will be communicated to him. in German. The possibility was given to the defendant to formulate a reasoned objection to the use of this language by the complainant within 14 days, an option of which it has not not used. The Litigation Chamber has also on several occasions proposed to the plaintiff to be assisted by an interpreter during the hearing, without response from complainant.

17. On January 25, 2023, the parties are heard by the Litigation Chamber.

18. On February 9, 2023, the minutes of the hearing are submitted to the parties.

19. On February 10, 2023, the Litigation Chamber received comments on the trial-verbally from the complainant. She receives no comments from the defendant.

II. Motivation

20. As indicated above, the subject of the complaint concerns three letters containing data of a personal nature (respectively from February 20, 2018, September 13, 2018 and July 5 2019) sent by the plaintiff to the King in order to ask him for help in the dispute between himself and the Agency (…) (…) as well as the Government of the German-speaking Community from Belgium. The plaintiff criticizes the King and his Cabinet for having transferred these letters to the government of the German-speaking Community, which is the subject of this affair.

21. During the proceedings before the Litigation Chamber, it is agreed to exclude from the debates the transfers of the first two letters sent by the plaintiff to the defendant, and of retain only the transfer of the third letter, i.e. that of July 5, 20192. constituting the transfers of letters of February 20, 2018 and September 13, 2018 by the

defendant to the Government of the German-speaking Community are therefore excluded

of the subject matter of this case.

22. As indicated above, the complainant raises in his complaint form (and the email of 6

December 2020 in which he shares with the SPL the parts of text that are not displayed

in its complaint form following a technical error) that these treatments would have had

place without basis of lawfulness, that the defendant would not have followed the request for exercise

of his right of access, that she would not have answered his question as to what is

2 Point "C.24" conclusions of the complainant (the complainant explains that he is limiting his complaint to the letter dated July 5, 2019 transferred

by the King's Cabinet to the government of the German-speaking Community, and confirmation that the first two letters

(of February 20, 2018 and September 13, 2018) only tend to confirm his letter of July 5, 2019). This was also

confirmed during the hearing.

happened to the personal data transferred to the Community government

German-speaking, and that she would not have given him any information about his rights within the meaning of the

GDPR. He adds that the defendant violated its obligation of professional secrecy, to which

administration is held.

23. In the conclusions in response of September 5, 2022, the defendant argues that the

The King's Cabinet and its members enjoy immunity from criminal jurisdiction and

administration. The defendant also underlines the lack of identification by the plaintiff of the

personal data in question and the disputed processing. The defendant

concludes that there is no breach of the GDPR on its part.

24. In the complainant's reply submissions of September 23, 2022, he responds

literally to the various paragraphs of the defendant's conclusions, and presents

again the arguments raised in his complaint. The Litigation Chamber holds,

as salient arguments of the text submitted by the complainant, his criticism of the "custom

constitutional” as the normative basis of the statute and its rejection in casu of immunity alleged criminal and administrative jurisdiction of the King's Cabinet and its members. By elsewhere, the Litigation Chamber accepts the challenge to the defendant's argument concerning the alleged absence of personal data in the letters, subject of the dispute and recalls that the plaintiff has no obligation to identify the data personal involved. The latter emphasizes that it is up to the defendant, in its capacity as controller to demonstrate its compliance with the requirements of the GDPR.

II.1. As to the lawfulness of the processing

25. As indicated above, although in its complaint form (and explanatory email to the SPL of December 6, 2020) the complainant identifies the forwarding of the three aforementioned letters (respectively of February 20, 2018, September 13, 2018 and July 5, 2020) as the subject of its complaint, it subsequently limits in its conclusions of September 23, 20223 its complaint to the sole transfer of mail dated July 5, 2020. As noted above (point 21), the processing that constitute the transfers of the letters of February 20, 2018 and September 13, 2018 by the defendant to the Government of the German-speaking Community, are therefore excluded of this case. The complainant points out that the letter of July 5, 2020 was forwarded by the Cabinet du Roi, more precisely by Mme V, without his prior consent.

26. The Litigation Chamber recalls that any processing of data must be lawful (article 5.1.a GDPR). Article 6.1 GDPR lists the different bases of lawfulness, which are not limited to the consent of the person concerned, contrary to what is implicitly indicated by the

3 Point “C.24” conclusions of the complainant

complainant (in his complaint form and in his conclusions). Bedroom Litigation emphasizes the absence of any hierarchy between the different bases of lawfulness of the GDPR, and recalls that in relations between a public service and a citizen, the a priori, consent is not an appropriate basis.

27. In its letter of 11 July 2022 inviting the parties to exchange submissions, the Chamber Litigation asked the parties to express themselves on several elements, including the articles 5.1.a and 6 (particularly Article 6.1.e) GDPR. Neither the defendant nor the plaintiff included developments on this subject in their conclusions. The defendant merely conclude by advancing the absence of breach on its part of Articles 5.1.a), 5.1.c) as well as than 6.1.e) GDPR.

28. In these circumstances, the Litigation Division examines whether, in the absence of the plaintiff's consent to the processing (the transfer of his letter to the King dated 5 July 2019 -), another lawfulness basis can be used. To the extent that the processing question was carried out by the King's Cabinet following a request for social assistance by the complainant to the King, it appears obvious that the processing took place within the framework of the exercise of its function of public authority by the latter, and it is necessary to examine whether the basis of lawfulness of Article 6.1.e) GDPR constitutes an adequate basis of lawfulness for the processing.

29. The Belgian legislator has not applied paragraph 2 of Article 6 GDPR, which provides the possibility of "more specific provisions to adapt the application of the rules of the this Regulation with regard to processing for the purpose of complying with paragraph 1, points (c) and (e), determining more precisely the specific requirements applicable to the treatment (…)"4.

30. The Litigation Chamber recalls that Article 6.1.e) GDPR implies that the person responsible for the processing is able to demonstrate that:

To) the processing is part of the performance of a task in the public interest or the exercise of the public authority; And

b)

the processing is necessary for the execution of the mission or the exercise of the authority

mentioned above.

31. Initially, the Litigation Division examines whether the processing falls within

the performance of a task in the public interest or in the exercise of official authority.5

32. In accordance with Article 6.3 of the GDPR, read in the light of recital 41 of the GDPR, the

processing of personal data which is necessary for the performance of a

legal obligation and/or the performance of a task in the public interest or relating to the exercise

4 Article 6.2 GDPR

5 See. Decision of the Litigation Chamber no 48/2022, paras 91 s.

public authority vested in a controller must be governed by a

clear and precise regulations, the application of which must be foreseeable for the persons

concerned.

33. Article 6.3 of the GDPR states: "The basis for the processing referred to in paragraph 1, points c)

and e), is defined by: a) Union law; or (b) the law of the Member State to which the controller

processing is submitted. The purposes of the processing are defined in this legal basis

or, in relation to the processing referred to in point (e) of paragraph 1, are necessary to

the performance of a task in the public interest or in the exercise of official authority, of which

is vested with the controller. "

34. Recital 41 of the GDPR specifies in this regard: "Where this Regulation makes

reference to a base

legal or to a measure

legislative, this does not mean

necessarily that the adoption of a legislative act by a parliament is required, without

prejudice to the obligations provided for under the constitutional order of the Member State

concerned. However, this legal basis or legislative measure should be clear and

precise and its application should be foreseeable for litigants, in accordance with the
case law of the Court of Justice of the European Union (hereinafter referred to as "CJEU") and
of the European Court of Human Rights. "Furthermore, according to Article 22 of the Constitution
Belgian, it is necessary that the "essential elements" of the processing be defined by means of
a formal legal norm (law, decree or ordinance).

35. In the present case, the processing is based on the specific framework of the role attributed to the King of Belgians by the Constitution. The role of the King emerges through the Belgian Constitution, and is anchored especially in Section III of the Constitution. He is supported in his duties by the members of his cabinet.

36. A report by a commission set up in 1949 to issue a reasoned opinion on the application of the constitutional principles relating to the exercise of the King's prerogatives and to the relations of the great constitutional powers between them indicates about the Cabinet of the King: “In the exercise of the powers attributed to him by the Constitution, the King not only has the right but also the duty to form a personal opinion on the matters which are submitted. To this end, the King must be informed and enlightened. If he could only be so by his Ministers, who are his only responsible advisers, but who almost always represent a fraction of public opinion, the royal office would risk being absorbed by the ministerial function and the King could only with difficulty fulfill his high mission party conciliator. This is why the King must be able to take the advice of collaborators private individuals who are not engaged in political struggles. 6”

6 https://www.cairn.info/revue-courrier-hebdomadaire-du-crisp-1993-22-page-1.htm, point 267

37. In particular, the Department of Requests and Social Affairs of the King's Cabinet, a department responsible for forwarded the complainant's mail, has the task of processing "requests for assistance social addressed to the King, the Queen and the other members of the Royal Family. »7

38. Insofar as the plaintiff sent a request for assistance to the King, it can be concluded that

the complainant (in the same way as the other citizens carrying out the same procedure) was informed of the possibility attributed to the King, whose limited powers are based on the Constitution, to intervene in the context of requests for assistance from citizens. Bedroom Litigation is of the opinion that it was foreseeable for the plaintiff that the Cabinet du Roi could, upon receipt of his letters, communicate his personal data to the Government of the German-speaking Community in an attempt to resolve the dispute and to assist the complainant. This is in all cases of application for the third letter that the plaintiff sent to the King, i.e. the letter of July 5, 2019, which is the subject of the dispute. The King's Cabinet had indeed informed the plaintiff of the transfer to the Government of the Community German-speaking of his two previous letters, more than a year before the transfer of the disputed letter, without the latter reacting or opposing it.

39. Next, the Litigation Chamber examines the necessity of the processing.

40. Paragraph 3 of Article 6 GDPR stipulates that the purposes of the processing carried out on the basis of the exercise of public authority "are necessary for the performance of a mission of interest public or subject to the exercise of official authority vested in the person responsible for the treatment ". It is therefore necessary to examine whether the transfer by the Cabinet du Roi of the mail of the complainant was necessary for the performance of his public interest mission.

41. In its judgment in Huber8, the CJEU expressed its opinion on this condition of necessity. She indicates Thus :

“(…) having regard to the objective of ensuring an equivalent level of protection in all Member States, the concept of necessity as it results from Article 7(e) of the Directive 95/46, which aims to precisely delimit one of the cases in which the processing of personal data is lawful, cannot have variable content depending on the Member States. Therefore, it is an autonomous concept of law community which must be interpreted in such a way as to respond fully to the subject of this Directive as defined in Article 1(1) thereof”

42. In his Opinion, the Advocate General explains in this regard that “the concept of necessity has a long history in Community law and is well established as an integral part of the proportionality test. It means that the authority which adopts a measure which carries interference with a fundamental right in order to achieve a justified objective must demonstrate that

7 https://www.monarchie.be/fr/monarchie/fonctionnement/cabinet-du-roi

8 CJEU, Heinz Huber v. Bundesrepublik Deutschland, 16 December 2008, C 524/06, para. 52

this measure is the least restrictive to achieve this objective. Furthermore, if the processing of personal data may be likely to infringe the fundamental right respect for privacy, article 8 of the European Convention for the Protection of Rights Rights and Fundamental Freedoms (ECHR), which guarantees respect for privacy and family, also becomes relevant. As the Court stated in the Österreichischer judgment Rundfunk and others, if a national measure is incompatible with Article 8 of the ECHR, this measure cannot meet the requirement of Article 7(e) of the Directive. Article 8, paragraph 2 of the ECHR provides that an interference with private life may be justified if it pursues one of the objectives listed therein and “in a democratic society, is necessary” for one of these purposes. The European Court of Human Rights has ruled that the notion of “necessity” implies that a “pressing social need” is involved”9.

43. This case-law formulated with regard to Article 7(e) of Directive 95/46/EC remains relevant today even though Directive 95/46 has been repealed, since this condition of necessity is maintained under the terms of Article 6.1 b) to f) of the GDPR. Section 6.1 of the GDPR indeed takes up the terms of article 7 of directive 95/46/EC of which it is the equivalent. It also applies to all the bases of lawfulness of article 6.1 GDPR which retain this condition of necessity.

44. The Court of Justice has also clarified that if there are realistic and less intrusive, treatment is not "necessary"10.

45. The Article 29 Group also referred to the case law of the Court

Court of Human Rights (ECHR) to identify the requirement of necessity11 and concludes

that the adjective "necessary" does not have the same flexibility as the term: "admissible", "normal

“, “helpful”, “reasonable” or “advisable”.12

46.

It is necessary to examine the necessity of the transfer of the mail by the defendant

to the Government of the German-speaking Community in the light of the above. THE

plaintiff sent his letter to the King asking for his help in resolving his

favor of the dispute which opposes him to the said Government, as well as to the (…). The complainant explains

in the letter that the Government reacts only partially to his request

of information. The defendant forwarded this letter for the purpose of drawing the attention of

collaborators of the said Government on the dispute raised in the complainant's letter.

9 Conclusions of Advocate General P. Maduro of 3 April 2008 in the CJEU case, Heinz Huber v. Bundesrepublik Deutschland,

16 December 2008, C 524/06

10 CJEU, Volker und Markus Schecke GbR and Hartmut Eifert v Land Hessen, 9 November 2010, joined cases C□92/09 and

C□93/09

11 Article 29 Group, Opinion 06/2014 of 9 April 2014 on the notion of legitimate interest pursued by the data controller

data processing within the meaning of Article 7 of Directive 95/46/EC, WP 217

12 ECHR, 25 March 1983, Silver and others v. United Kingdom, para 97

47.

Would it have been possible for the defendant to follow up on the request for social assistance

addressed to the King, applying realistic and less "invasive" measures than the transfer

of the complainant's letter, which contains his personal data?

48. The Litigation Division notes, on reading the letter of July 5, 2019, that it is limited

in full to the explanation of the dispute for which the plaintiff has requested the assistance of the King, and

that this letter mentions the surname and first name as well as the physical address of the complainant. THE
mail therefore does not contain any personal data unrelated to the explanation of the dispute
and therefore superfluous to the purpose of assisting in the resolution of the dispute for which the complainant has
asked the King for help. A measure such as the pseudonymization of the data of the
complainant before sending the letter to the Government of the German-speaking Community
would therefore not have been a realistic or effective initiative on the part of the
defendant to resolve the dispute.

49. Also,
the plaintiff accuses
the defendant for having forwarded its mail to the
Government of
the German-speaking community,
instead of contacting
said
Government by drawing its attention to its obligation to respond to a request
of information. He explains that in this way, if the Government does not react to
intervention of the King, the latter could have taken a stand and reminded the Government of its
duty to inform. He adds that the defendant could have contacted the collaborators
of the Government of the German-speaking Community individually to remind them
this duty.

50. Nevertheless, there is a contradiction between the Complainant's request for effective intervention by the
King, and a proposal to contact the collaborators of the Government concerned to
remind them of the Government's obligation to follow up on a request
of information, to which they have already followed up (although partially according to the complainant).

51. Furthermore, and as indicated above, the Litigation Division notes that the complainant raises
in its letter that the Government of the German-speaking Community only responded by

partial way to its request for information. In this context, the Litigation Chamber
considers that the plaintiff can reasonably be expected that the defendant shares
the letter explaining the dispute and exposing the fault on the part of the Government of the
German-speaking community in the eyes of the plaintiff, action taken by the defendant
in order to draw the Government's attention to the complainant's situation.

52. The Litigation Chamber also notes that the complainant indicates, in his letters
sent to the King, having already turned unsuccessfully to the Ombudsman, whose roles are
precisely to examine
the complaints
individual concerning decisions and
THE
functioning of the administration, to analyze the conflict and to propose solutions for the
resolution of the dispute. This tends to indicate that other attempts to resolve the conflict have not
not bear fruit.

53. Also, the Litigation Chamber is of the opinion that it cannot reasonably be expected of the
Cabinet du Roi, in the specific context of the follow-up given to a request for social assistance, that
this meticulously examines the different possibilities of “realistic” actions and the
less intrusive as possible. The Litigation Division also notes that in the present case,
the plaintiff gave no indication in his various letters to the King on how
which he wanted him to intervene.

54. It further notes that, as raised by the Respondent13, the Complainant did not react to the
two letters from the defendant informing it of the transfer to the Government of the
German-speaking Community of his first two letters. The complainant was thus warned
the transfer of his letter of February 20, 2018 to the Government of the Community
German-speaking by a letter from the defendant dated March 8, 2018, and he was likewise

informed of the transfer of his letter of September 13, 2018 by a letter from the defendant dated September 28, 2018, without any reaction on its part. It's only August 6 2019, following the transfer of his third letter to the King (dated July 5, 2019), i.e. approximately one year later, the plaintiff reacted by blaming the defendant transfers of the three letters to the Government of the German-speaking Community. GOOD that it is up to the data controller to demonstrate its compliance with the GDPR (principle of responsibility), and while the said letters were excluded from the proceedings, the Chamber Litigation notes that a proactive attitude of the complainant consisting in reacting to letters informing him of the transfers of his first two letters would have avoided the present litigation around the transfer of the complainant's third letter to the King (dated July 5, 2019).

55. To the extent that the personal data contained in the mail transferred by the defendant are strictly limited to the explanation of the dispute for which the plaintiff requested the help of the King, and in light of the foregoing, the Litigation Chamber is of the opinion that, their treatment is necessary for an effective intervention of the defendant. The Litigation Chamber remains in default of collecting, in the present case, a “realistic and less intrusive” measure that the defendant could have taken in order to help the complainant in his dispute, in an efficient manner, in particular insofar as the latter specifically complains that the Government of the German-speaking Community only partially responded to a request for information from him.

56. The processing by the defendant therefore corresponds to the criteria of Article 6.1.e) GDPR. Insofar as the defendant thus has a basis of lawfulness for the processing carried out, the Chamber concludes that there is no breach of Article 5.1.a) and 6.1 GDPR.

13 Point 27 of its conclusions and 29 of its summary conclusions

II.2. Regarding the information to be provided under Articles 12 and 13 GDPR

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57. Next, the plaintiff alleges that the defendant did not inform him of what “is

happened to his personal data14" (free translation from German), nor from the database

of lawfulness on which it relied for the transfer of the litigious mail, nor of its rights to the

title of the GDPR15.

58. 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

from it or from third parties, to be informed of the elements listed in these articles (§§ 1 and 2). In case of

direct collection of data from the person concerned, the latter will be informed as long as

of the elements listed in § 1 and in § 2 of article 13 of the GDPR, i.e.:

To. the identity and contact details of the data controller as well as the

contact details of the data protection officer, if any;

b. the purposes of the processing as well as the legal basis for it (when the

processing is based on the legitimate interest of the controller, this interest

should be specified);

vs. recipients or categories of recipients of the processing;

d. the intention of the data controller to transfer the data out of

the European Economic Area;

e. the data retention period;

f. the rights conferred on him by the GDPR, including the right to withdraw his

consent at any time and that of filing a complaint with the authority

data protection control (in this case the DPA);

g. information on whether the requirement to provide data to

personal nature has a regulatory or contractual nature and

THE

consequences of their non-provision as well as of the existence of a

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

59. The Litigation Chamber also recalls that in the event of direct collection (Article 13 of

GDPR), there are no exceptions.

14 Ground 4-B of the complainant's email of 6/12/2020 completing his complaint form: „Dem Antragsteller wurde das Recht verwehrt, zu erfahren, was mit seinen persönlichen Daten geschehen ist, auf welcher möglichen rechtlichen Grundlage Informationen an ein Ministerium weitergeleistet wurden (…)“

15 Ground 4-C of the complainant's email of 6/12/2020 completing his complaint form

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60. 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 from the person concerned but also from third parties.

61. 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.

62. In its letter of 11 July 2022 inviting the parties to exchange submissions, the Chamber Litigation asked the parties to express themselves on several elements, including the articles 12 and 13 GDPR. The defendant's submissions are silent on this point, and merely conclude that there is no violation of Articles 12 and 13 GDPR16.

63. In its (undisputed) capacity as data controller and in accordance with the liability provided for in Articles 5.2 and 24 of the GDPR, the defendant is obliged to comply with the principles of the GDPR and must be able to demonstrate it.

64. The Litigation Division recalls, as pointed out by Advocate General P. Cruz Villalón as well as that by the Court of Justice of the European Union in the Bara case, respect for provisions on transparency and information is essential because it constitutes a precondition for the exercise by data subjects of their rights, which are one GDPR17 foundations.

65. The Litigation Division notes that the defendant does have a declaration of privacy on

THE

site

website

of

there

monarchy

(see

https://www.monarchie.be/fr/informations/declaration-de-confidentialite). Nevertheless, such

as indicated in paragraph 1.3 of the statement, it only applies to data

of a personal nature of visitors to the website, not to those of the subjects of rights having

sent requests for assistance to the King as in the present case.

66. In the absence of indications and evidence from the defendant that it would have provided to the

complainant the information under Articles 12 and 13 GDPR (specifically the basis of

lawfulness on which it based the processing constituted by the transfer of the litigious mail, the

recipients of this transfer, and the rights within the meaning of the GDPR available to the complainant), the

Litigation Chamber concludes that the defendant violated these articles.

II.3. Regarding the complainant's request for access under Article 15 GDPR

67. The Complainant further argues that the Respondent did not follow up on his request

access. The Litigation Division also asked the parties to comment on this subject,

in its letter inviting the exchange of conclusions. The parties have not included any

16 See point 29 of the defendant's conclusions and point 33 of its summary conclusions

17 CJEU, 1 October 2015, Bara, C-201/14, § 33 (Conclusions of Advocate General P. Cruz Villalón, 9 July 2015, § 74

developments in this respect in their conclusions. However, it appears from an examination of the

documents in the file that the complainant's request for access was made, via a text appended to

a letter dated August 6, 2020, from the Complainant to the Respondent. This appendix consists of a text

written by the plaintiff, which he asks the defendant to sign. The text of this appendix to the plaintiff's letter of August 6, 2020 indicates that the defendant recognizes breaches of the GDPR on its part (processing without basis of lawfulness) and grants it a symbolic financial compensation (from the defendant to the plaintiff). In this same appendix, the plaintiff also indicates that the defendant, by signing the text, undertakes to "inform" the complainant of all written exchanges and discussions telephone or oral conversations that she would have had concerning her data (as well as those of his mother), since September 2018 (free translation of German)18. The Chamber assumes that the Complainant is referring to this part of the documents that he has submitted, when he refers to his request for access.

68. The Litigation Division notes that the complainant's request for access was made via a text requiring the acknowledgment of breaches of the GDPR by the defendant who by elsewhere should undertake to grant him financial compensation and transmit to him the informations requested. Insofar as this request for access is made via a text prejudicial to the defendant (acknowledgment of violation of the GDPR), it cannot be accused the defendant of not having followed up on the appendix. By being inherently linked to a voluntary acknowledgment by the defendant, acknowledgment moreover detrimental to the latter, the request does not constitute a valid request for access on the part of the complainant, insofar as this request diverts the right of access from his legal purpose.

II.4. Regarding the breach of professional secrecy

69. The plaintiff asserts that the defendant violated professional secrecy by transferring the mail subject of the dispute. He bases his argument on a judgment of the Council of State of February 11, 1972 (n°7699) which indicates: “within the administration, information covered by professional secrecy can only be communicated to the administrations and agents competent to carry out the mission for which this information was

collected. The agents in charge of managing the personal files of the agents must not

transmit to the assigning services only the elements relating to the career of the agents.

According to the Commission for Access to Administrative Documents (CADA), the documents

18 Annex to the letter of 6/8/2020 from the plaintiff to the defendant: “Weiterhin verpflichtet sich der Unterlassungsschuldner, dem Unterlassungsgläubiger Auskunft über sämtlichen Schriftverkehr oder Gedächtnisprotokolle der Telefonate oder Gespräche zu geben, die seit September 2018 bei Ihnen als persönliche Daten über uns erhoben, verarbeitet oder weitergeleitet wurden und die uns als Personen betreffen oder erwähnen“

personal data relating to personnel management can only be communicated to agents

concerned or their representatives. ".

70. The Litigation Division recalls that pursuant to Article 4 § 1 LCA, DPA is

responsible for monitoring compliance with the fundamental principles of the protection of

data, as affirmed by the GDPR and other laws containing provisions relating to

the protection of the processing of personal data. Also, in application of

articles 51 et seq. of the GDPR and Article 4.1 LCA as well as 33 § 1 LCA, it is up to the Chamber

Litigation as an administrative body for litigation of the DPA, to exercise control

effective enforcement of the GDPR and to protect the fundamental rights and freedoms of

natural persons with regard to the processing, in compliance with Article 8 of the Charter of

fundamental rights of the European Union. Article 4, § 2, second paragraph of the LCA adds

furthermore that the DPA is the competent supervisory authority when no other law does.

arranges otherwise.

71. However, the violation of professional secrecy as provided for in article 458 of the Penal Code falls under

the jurisdiction of the courts of the judiciary, and therefore not that of the Chamber

ODA litigation.

II.5. As to the immunity of members of the King's Cabinet

72. The inviolability of the royal person is established by article 88 of the Constitution. Being

inviolable, the King is irresponsible so that only ministers are responsible.

73. Unlike the King, the status of the King's collaborators, members of his Cabinet, does not is neither based on the Constitution nor on a Royal Decree, but is based on custom constitutional19. They are appointed by the King, without ministerial countersignature. As indicated supra (point 36), the members of the King's Cabinet are his private collaborators, unrelated to ministers, who inform the King on matters submitted to him.

74. Two streams of doctrine embody opposing positions regarding the immunity of members of the King's Cabinet. One of the currents indicates that once the collaborators of the King designated by house decree, their action escapes the control of Parliament and of the power judicial.

75. According to this doctrine, the King's Cabinet constitutes a useful cog in the functioning of the constitutional regime, but its members have no power of their own or any responsibility in the state. According to A. Molitor, the personal collaborators of the King did not

19 J. Velaers, De Grondwet. Een artikelsgewijze commentaar, II, Brugge, die Keure, 2019, p405

20 CRISP, Weekly Courier du CRISP, “The King in the Belgian Constitutional Regime”, 1993.22, n°1407, p. 31; Belgian Monitor of August 6, 1949, p. 7598.

of responsibility before the parliament, but only before the King for the facts which fall within the exercise of their specific functions21. The King and his collaborators would be so closely associated with the King that the same author does not hesitate to conclude that "the members of the Maison du Roi, at their level and in their place, know in the exercise of their function a situation analogous to that imposed on the King himself. » .

76. According to J.-C. Scholsem, the King's collaborators should be considered as an extension of the royal person whose action they make possible and facilitate. They don't officially existence and their role is to manage the royal function. The collaborators would participate, on this account, in the exercise of the royal function and its inviolability.22

77. This doctrine is illustrated in particular in parliamentary document no. 1-611/10 as well as in the Report of the Commission of Inquiry responsible for issuing a reasoned opinion on the application of the constitutional principles relating to the exercise of the King's prerogatives and to the relations of the great constitutional powers among themselves. In this context, a study has been made on the question of whether a parliamentary committee can question members of the King's Cabinet in their capacity as witnesses. This report concludes that a collaborator of the King cannot be summoned before a parliamentary committee for explain the role that the King or one of his collaborators may have played in a process decision-making, because the political irresponsibility of the King reflects on his collaborators24.

78. Another doctrinal current concludes concerning the above-mentioned report (of the Commission responsible for issuing a reasoned opinion on the application of the constitutional principles relating to the exercise of the King's prerogatives and the relationship of the great constitutional powers between them), that “if a commission of inquiry cannot, in the current state of the interpretation of constitutional texts, question the members of the King's cabinet on the acts and words of the head of state or on the dialogue he has established with his ministers, nothing prevents him, in our opinion, to challenge them on the actions and words that were theirs, even on the dialogue that they have tied, apart from the king, with the members of the government”25.

Available

21 A. Molitor, The royal function in Belgium, 2nd edition, C.R.I.S.P., Brussels, 1994, p. 135.

22 A. Molitor, op. cit., p. 163.

23 https://www.senate.be/www/webdriver?MIval=/publications/viewPub.html&COLL=S&LEG=1&NR=611&VOLGNR=10&LANG=en

24 The report states “3.1. Given the status of the King's personal collaborators described in point 2.3., their questioning by a parliamentary commission would in fact amount to questioning the King himself, which of course is not not possible, given its absolute inviolability (see point 1.2.). Moreover, such an interrogation would still violate other

constitutional principles, namely the unity between the King and the government and the concomitant prohibition to know the part
of the King in the decisions taken under the responsibility of the ministers (see point 1.3.). The constitutional principles in matters of parliamentary monarchy are therefore opposed to the questioning of personal collaborators of the King by a commission
policies. »
(https://www.senate.be/www/webdriver?MIval=/publications/viewPub.html&COLL=S&LEG=1&NR=611&VOLGNR=10&LANG=fr)

25 M. Uyttendaele, “Lesson XXIII – Federal institutions – the head of state” in Thirty Lessons in Constitutional Law, 1st edition, Brussels, Bruylant, 2011, p. 671.

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79. In this sense, the Litigation Chamber notes that another doctrinal trend is opposed to the extension of the King's immunity to those around him.

80. Insofar as neither the Constitution nor any other legal text extends the inviolability and criminal irresponsibility of the King beyond his own person, this doctrinal current concludes the non-extension of the criminal immunity of the King to those around him26.

81. The Litigation Division notes that EU law also grants privileges and immunities to the leaders of the Union, including their advisers and experts, officials and other Union officials27. The Court of Justice thus recalled in its judgment Hungary v. Slovak Republic of October 16, 2012 that “(…) on the basis of customary rules

of general international law as well as those of multilateral conventions, the head State enjoys a special status in international relations which implies, in particular, privileges and immunities. 28 Similarly, international law recognizes immunity from heads of state.

82. In the light of the foregoing, and within the strict framework of the tasks of assisting citizens, the Litigation Chamber notes that despite the absence of an indisputable normative basis and irrefutable in support, and although the right to data protection constitutes a right fundamental, the majority doctrine is in favor of extending the immunity of the King to members of his cabinet. The Litigation Chamber agrees with this conclusion.

83. Nevertheless, the Litigation Chamber emphasizes that although it rules out the inadmissibility of prosecution, immunity does not remove the illegality of the conduct. She therefore invites the defendant, then of the finding (supra point 66) of breach of Articles 12 and 13 of the GDPR on its part, to comply.

III. Regarding corrective measures and sanctions

84. Under Article 100 LCA, the Litigation Chamber has the power to:

1° dismiss the complaint without follow-up;

2° order the dismissal;

26 F. Kuty, “General principles of Belgian criminal law”, Volume I – Criminal law, 2nd edition, Brussels, Larcier, 2009, p. 419.

27 Treaty on the Functioning of the European Union, Article 343: “The Union shall enjoy on the territory of the Member States privileges and immunities necessary for the accomplishment of its mission under the conditions defined in the protocol of April

1965 on the privileges and immunities of the European Union. The same applies to the European Central Bank and the European Investment Bank. », and Protocol 7 on the privileges and immunities of the European Union (https://eur-lex.europa.eu/resource.html?uri=cellar:07cc36e9-56a0-4008-ada4-08d640803855.0009.02/DOC_14&format=PDF)

28 Court of Justice of the European Union, C-364/10, Hungary v. Slovak Republic, 16 October 2012, EU:C:2012:630, §46 and §§ 45-52.

29 See Institute of International Law, Immunities from Jurisdiction and Execution of Heads of State and of Government in International Law, https://www.idi-iil.org/app/uploads/2017/06/2001_van_02_en.pdf.

3° order a suspension of the pronouncement;

4° to propose a transaction;

5° issue warnings or reprimands;

6° order to comply with the requests of 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 compliance of the processing;

10° order the rectification, restriction or erasure of the data and the notification of these to the recipients of the data;

11° order the withdrawal of accreditation from certification bodies;

12° to issue periodic penalty payments;

13° to issue administrative fines;

14° order the suspension of cross-border data flows to another State or a international body;

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

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

85. In order to identify the most appropriate corrective measures and sanctions, the Chamber

Contextualized litigation

the shortcomings of which

the defendant surrendered

responsible. Moreover, it belongs sovereignly to the Litigation Chamber, as

independent administrative authority — in compliance with the relevant articles of the GDPR

and ACL — to determine the appropriate corrective action(s) and sanction(s).

86. In this case, the Litigation Chamber takes into account the fact that counsel for the defendant

indicated during the hearing of January 25, 2023 that it intends to

compliance with its privacy statement (or privacy policy) on its website in order to

to include the processing carried out in the context of applications for social assistance.

87. It also takes note, as indicated (supra, point 82), of the immunity of the party

defendant. However, immunity does not remove the illegality of the conduct, the

Chambre Litigation invites the defendant to comply with Articles 12 and 13 of the GDPR.

IV. Publication of the decision

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

Litigation, this decision is published on the website of the Protection Authority

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Datas.

FOR THESE REASONS,

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

-

Invites the defendant to comply with Articles 12 and 13 of the GDPR, insofar as

by virtue of the immunity from which the defendant benefits, a sanction on the basis of article

100 LCA cannot be imposed on him.

In accordance with Article 108, § 1 of the LCA, an appeal against this decision may be lodged,

within thirty days of its notification, to the Court of Markets (court

d'appel de Bruxelles), with the Data Protection Authority as defendant.

Such an appeal may be introduced by means of an interlocutory request which must contain the

information listed in article 1034ter of the Judicial Code30. The interlocutory motion must be

filed with the registry of the Market Court in accordance with article 1034quinquies of C. jud.31, or

via the e-Deposit information system of the Ministry of Justice (article 32ter of the C. jud.).

(S.) Hielke HIJMANS

President of the Litigation Chamber

30 The request contains on pain of nullity:

the indication of the day, month and year;

1°

2° the surname, first name, domicile of the applicant, as well as, where applicable, his qualities and his national register number or

Business Number;

3° the surname, first name, domicile and, where applicable, the capacity of the person to be summoned;

(4) the object and summary statement of the means of the request;

(5) the indication of the judge who is seized of the application;

6° the signature of the applicant or his lawyer.

31 The request, accompanied by its appendix, is sent, in as many copies as there are parties involved, by letter recommended to the court clerk or filed with the court office.