

GZ: DSB-D123.955/0002-DSB/2019 from 18.3.2019□

[Note editor: names and companies, legal forms and product names, addresses (incl.□

URLs, IP and email addresses), file numbers (and the like), etc., as well as their initials and□

Abbreviations may be abbreviated and/or changed for reasons of pseudonymization.□

Obvious spelling, grammar and punctuation errors have been corrected.□

The notice is in the version of the notice of correction dated March 25, 2019, GZ: DSB-D123.955/0003-□

DSB/2019 reproduced (correction of an incorrect date).]□

NOTICE□

S P R U C H□

The Data Protection Authority decides on the complaint of Alexandru A*** (complainant) dated□

December 21, 2018 against N*** etc. (Respondent) for a violation of the right to□

Deletion as follows:□

- The complaint is rejected.□

Legal basis: Article 77 of Regulation (EU) 2016/679 (General Data Protection Regulation - GDPR),□

OJ No L 119, 4.5.2016, p.1; Section 6 of the General Administrative Procedures Act 1991 (AVG),□

Federal Law Gazette No. 51/1991 as amended.□

REASON□

A. Submissions of the parties and course of the proceedings□

1. With a submission dated December 21, 2018, the complainant alleged a violation of the law□

for deletion and submitted the following [spelling and spelling as in the original]:□

"Ladies and gentlemen,□

my name is Alexandru A***, Romanian citizen.□

Russian, Latin and Romanian spelling of my name:□

[Editor's note: abbreviated here]□

I am writing to you requesting that misplaced personal information about myself and□

remove my family, based on search results in U*** from the following sites :□

Requests in u***.md, u***.ro, u***.com: "Alexandrue A****"; [abbreviated here]"

The information on these pages contains distorted facts and untruths that are not enforced

official documents are proven or verifiable and are simply wrong. journalists of these editions

distort facts and rely on non-existent information by reference

personal interviews I never gave.

- 2 -

This information directly affects my professional activity, brings moral suffering

and material losses, directed against me and members of my family society and

make my personal life much more difficult. They also contain photos of me giving it to others

allow me to be identified. I would like these images to be removed as well as that

continued danger to my safety and that of my family.

I have repeatedly contacted the owners of E***.MD and those with it in person and by telephone

Associated resources contacted with a request to remove the articles that do not correspond to reality

correspond to my personal data and data about my family as well as my professional

activity included.

In response, I received only baseless denials and threats from

Information bullying (or conducting a false information campaign against me).

I also contacted the operators of the search engine U*** with a request to discredit them

and to remove defamatory pages about my person. U*** here links the website-

Contacting administrators directly (see attachment), which, as mentioned above, was also done without

Success.

Next to my application you will find the necessary documents and complaints to the respective

Authority, as well as completed applications (forms) for the deletion of articles and data about my

Person.

Regards.

Alexandra A****"

Fifteen requests (one duplicate) for cancellation within the meaning of Art. 17 were attached to the submission□
GDPR, which were addressed to various data protection officers. The majority□
the person responsible indicated in the requests for deletion was based in the Republic□
referred to as Moldova. Austria was not given as the address for a single person responsible.□
The website "e***.md" indicated by the complainant is also one□
Moldovan site.□

2. By letter ("Notice to the Complainant") dated January 16, 2019, the□
Data Protection Authority essentially informs the complainant that it is recommended that the□
to withdraw a complaint to the Austrian data protection authority and to the Romanian one□
data protection authority, as this is the supervisory authority of his place of residence and□
in addition, all attachments submitted to the Austrian data protection authority□
Complaints would have to be submitted in the official language pursuant to Art. 8 Para. 1 B-VG. The only relation of□
Data protection complaint regarding the Austrian data protection authority would be in□
present case an actual contribution of the same to the Austrian□
Data Protection Authority.□

- 3 -□

3. By letter dated January 29, 2019, the complainant replied: "[...] but you want□
nevertheless request that my application be processed further. My opinion is that the Austrian□
Data Protection Authority can solve the problem better than Romanian Data Protection Authority.□
[...]".□

4. By letter dated February 16, 2019, the complainant submitted German translations of□
documents submitted with the original complaint and stated:□
"[...] in the previous letter of January 16, you pointed out that the documents□
are to be submitted in German. Attached to this email you will find the German ones□
Translations of the documents I previously submitted.□
From my understanding of EU law, there is a way to appeal to the accused□

To contact people in any language, including German, and to offer them my rights□

to respect personal data.□

To access the information about me contained in the articles in different languages□

check, I used an automatic translation.□

Also, your decision to delete it would suffice for me. In that case I will□

have an opportunity to contact U*** and a request to have the web pages removed□

to set from search results.□

I ask you to acknowledge receipt of this letter and let me know how long it will take to process my request□

to inform request.□

Sincerely,□

Alexandra A***□

B. Subject of Complaint□

In a first step, the question must first be clarified as to whether the complainant pursuant to Article 77 GDPR□

has the right to submit the relevant data to the Austrian data protection authority□

to submit a data protection complaint and whether the Austrian data protection authority for the content□

treatment is responsible.□

C. Findings of Facts□

The applicant, a Romanian citizen, resides in the Republic of Romania. He is□

General Director of the Moldovan pharmaceutical company “P*** Farm SRL”.□

- 4 -□

Evidence: Letter from the General Prosecutor's Office of the Republic of Moldova to Alexandru A***; copy of□

Appellant's passport.□

Not a single controller against whom the complainant filed a request for erasure□

has its registered office in Austria. The vast majority of requests for deletion are against□

Responsible in the Republic of Moldova (otherwise the seat is Romania or Hong Kong□

indicated). In addition to the country-specific top-level domain of Romania (.ro) and the generic□

Top-level domain (.com) - related websites are in Romanian or English□

held - the majority of the websites of those responsible end where they claimed□

discriminatory content can be seen, with the top-level domain of the Republic of Moldova (.md) and are□

these are held in Russian or Romanian.□

Evidence: Complainant's letter of 21 February 2019, Complainant's letter□

dated February 16, 2019.□

The complainant justifies the competence of the Austrian data protection authority□

in particular with "[...] My opinion is that the Austrian data protection authority has solved the problem□

better than [the] Romanian data protection authority can resolve. [...]"□

Evidence: Complainant's letter dated 29 January 2019.□

D. In legal terms it follows□

D.1. General□

According to Art. 77 GDPR, each data subject has the right to do so, without prejudice to anything else□

administrative or judicial remedy, the right to lodge a complaint with a□

Supervisory authority, in particular in the Member State of your habitual residence, your□

workplace or the place of the alleged infringement if the data subject believes□

that the processing of personal data concerning you violates this regulation□

violates.□

adults 141 states that every data subject should have the right to□

supervisory authority, in particular in the Member State of your habitual residence□

to submit and seek an effective judicial remedy in accordance with Article 47 of the Charter,□

if they see their rights under this regulation violated or if the supervisory authority□

does not act upon a complaint, rejects or rejects a complaint in whole or in part□

or does not act, although this is necessary to protect the rights of the data subject.□

D.2. In the matter□

The complainant has his habitual residence in Romania, is the director general of the in□

of the Republic of Moldova established company "P*** Farm S.R.L" and is the place of

- 5 –

alleged violations in none of the cases in Austria. The alleged violations

are mainly attributed to those responsible whose registered office is indicated with "Republic of Moldova".

There is also no other connection to Austria. Thus, none of the in Art. 77 GDPR

after the term "in particular" demonstratively listed variants regarding the possibility of

filing a privacy complaint.

The only reference to possible jurisdiction is the Austrian data protection authority

the fact that the complainant brought the privacy complaint to her and that

the complainant is fluent in German.

Even if the wording ("in particular") of Art 77 GDPR and that of Recital 141 it

suggest that a complaint can be lodged with any supervisory authority within the meaning of the GDPR

it must be countered that it cannot be the sense and purpose of Art 77 GDPR,

to declare supervisory authorities competent to lodge a complaint, to which none

there is an objective connection. The aim of the GDPR is to enable the exercise of legal protection interests

facilitate by enabling data subjects to lodge a complaint with a supervisory authority

submitted to which there is a spatial and/or linguistic close relationship. So it is not

more - as required by the legal situation in accordance with Directive 95/46/EC - to lodge a complaint

to the supervisory authority in whose district the person responsible is based.

Nevertheless, Art. 77 GDPR cannot be understood as allowing a completely free

Election of authorities ("forum shopping"), bypassing supervisory authorities, which may have a

proper conduct of the proceedings is not trusted, but to which there is an objective connection in the above

described sense exists.

Merely the argument "that the Austrian data protection authority is able to solve the problem better than [the]

Romanian data protection authority can dissolve", is thus for a justification of jurisdiction

regarding the filing of the data protection complaint with the Austrian data protection authority

to be regarded as insufficient.□

Due to a lack of jurisdiction, the appeal lodged was therefore in accordance with the verdict□

to reject.□