Litigation Chamber

Decision on the merits 55/2021 of 22 April 2021

File number: DOS-2019-05270

Subject: Complaint against a public institution for refusal to erase and violation of the

principle of confidentiality in the processing of a file

The Litigation Chamber of the Data Protection Authority (hereinafter DPA), made up of

Mr. Hielke Hijmans, chairman, and Messrs. Ch. Boeraeve and Y. Poullet, 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 establishing the Data Protection Authority (hereinafter LCA);

Having regard to the internal rules of the Data Protection Authority as approved by the

Chamber of Representatives on December 20, 2018 and published in the Belgian Official Gazette on January 15, 2019;

Considering the documents in the file;

Made the following decision regarding:

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The complainant: Mr X,

The data controller (defendant): Y (Y1), , advised by Maîtres Marc

Uyttendaele (m.uyttendaele@ugka.be) and Patricia Minsier (p.minsier@ugka.be).

I.

Facts and feedback

1) Background

1. The complainant submits a complaint to the DPA about a request for the erasure of

personal data processed by Y1 (hereinafter Y1). In his complaint, he indicates that he is seeking

the erasure of his data as well as that of his son. The complainant sent, by

through his lawyer, two letters within three months, without these having

led to an answer.

2. It appears from the documents in the file that the complainant and Mrs. Z (hereafter: the mother of the child)

were going through a divorce at the time. They participated in an aid program

Y1 concerning their son, for whom specialized help seemed necessary. The first

assistance program was dated September 18, 2017 and valid for a period of one year (see below).

after, the first aid program). According to the defendant, it was followed by a second

aid program which would have ended in February 2019 (hereinafter, the second aid programme).

The existence of this second aid program is contested by the complainant.

3. During an email communication between the child's mother and a Y1 delegate, the mother

of the child asks the delegate if she was able to speak with the father of the child (i.e.

say the complainant), or with the child's teacher. The mother says she is worried about the situation

of her son who would become increasingly agitated and aggressive (email of January 9, 2019).

4. On January 10, 2019, the Y1 delegate replied to this email, writing in particular the paragraph

reproduced below:

“I was able to talk to Mr. X before the holidays as agreed. When I confront

Monsieur to the difficulties he seems to be having with his son at home, Monsieur denies and says that

everything is fine. It contradicts everything you may have told me or observed and minimizes the consequences

that overly violent action movies could have on his son. »

5. On May 9, 2019, the complainant sent an email to the Secretariat of the Ethics Commission1

(hereafter: the Commission). On June 14, 2019, the plaintiff's lawyer sends a letter to the

Commission, in which he complains that the mother of the child would have used

confidential information of the Y1 in the civil procedure which opposes them in court

of the family. The complainant identifies this information as "information

1 Ethics Committee, letter of January 8, 2020 and Opinion 219, p.1. This email is not provided to the Litigation Chamber.

confidential information and reports issued by your department". He thinks it's a crime.

to the Code of Ethics, as a result of which he declares that he wishes to terminate

the intervention of the Y1 This letter follows a first email which would have been sent on May 9

2019, but which has not been added to the file.

He also asks that the file containing his personal data and that of his son

is erased pursuant to Article 17 of the GDPR.

6. On July 5, 2019, the Ethics Commission replied to this letter by email. She declares there

in essence that the denounced practice is not the work of a Y1 employee, but of

the opposing party (the mother of the child) in the civil proceedings. The Commission does not consider itself

not competent to give an opinion on this subject and decides to close the examination of the

request. It adds that it is not competent to examine a request for the erasure of

personal data contained in ongoing files2.

7. In response, the complainant sends a second letter dated July 22, 2019 in which he specifies

that this is the way the Y1 would have transmitted confidential information to the mother

of the child involved. It specifically refers to the content of the email of the 10

January 2019 (see point 4) and the text of the agreement relating to the first aid programme, dated

of September 18, 2017 (see point 2). He reiterates his intention to put an end to the intervention of the

Y1 and requests a response to its deletion request.

2) Procedure before the Litigation Chamber

8. On 8 October 2019, the complainant lodged his complaint with the DPA. This relates to the

deletion request. The complaint is declared admissible by the Frontline Service on

October 29, 2019 and sent to the Litigation Chamber.

9. On December 3, 2019, the Litigation Chamber decided to deal with the case on the merits. This

decision is communicated to the parties on the same day by registered mail. The part□

defendant is identified as the General Administration of Y1. He is also□

asked the complainant to provide the email from the Ethics Commission of July 5, 2019 which□

had not hitherto been brought to the attention of the Litigation Chamber.□

2 A first email sent at 2:55 p.m. is addressed to the complainant and does not mention the request for erasure. One□

second email sent at 3:30 p.m. the same day, addressed to the plaintiff's lawyers, contains a sentence indicating that the□

Commission considers itself incompetent with regard to the request for erasure.□

10. On December 16, 2019, the complainant sent the requested email to the Litigation Chamber and□

requests a copy of the documents in the file as well as confirmation of the timetable for the exchange of□

conclusions. The Litigation Chamber responds to the plaintiff's requests on December 17□

2019.□

11. On December 31, 2019, counsel for the defendant, identified by them as being□

Y, ask for a copy of the documents in the file. This is sent by the Chamber□

litigation on January 7, 2020. Counsel for the defendant send their□

conclusions on January 14, 2020.□

12. They first indicate that the lack of response to the complainant's request for erasure□

explained by the fact that it was addressed to the Ethics Commission, a body□

independent, dealing exclusively with ethical issues in this area. They□

add that the Ethics Commission has a significant delay in processing the□

requests, which explains why it has not yet issued an opinion on the ethical issue□

contained in the plaintiff's request.□

13. Next, the defendant considers that it cannot grant the request for erasure□

of the complainant, given that the processing is necessary to comply with a legal obligation□

or to perform a task in the public interest (Article 17.3 of the GDPR). Erase this data□

would prevent the defendant from carrying out its legal missions, which continue even after□

closing the file.

14. Furthermore, the Respondent adds that the Complainant alone does not have the authority

parental control over his son, and that the request should therefore in principle come from both parents,

who together have parental authority. She adds that the processing of data

contained in the file is also necessary from an accounting point of view. Those data

are indeed used as proof of payment of certain costs (in this case, costs

interpreting) whose retention is necessary in the context of the financial control exercised,

in particular, by the Court of Auditors.

15. The defendant also sets out a new policy that it has put in place in order to

make its practices compliant with the GDPR.

16. Finally, she expresses in the alternative her arguments concerning a possible sanction and

its proportionality.

17. It also appears from the defendant's submissions that it sent a letter to the

Ethics Committee on December 23, 2019, asking it to rule urgently

on the complaint. The response of the Ethics Commission dated January 8 is attached

to conclusions. In essence, it states that it is not competent for the questions

relating to the request for erasure and having informed the plaintiff's lawyers of this by

email on July 5, 2019. She adds that the ethical aspects of the complaint will be addressed

of the day of the meeting of January 15, 2020.

18. On January 15, 2020, the Ethics Commission issued an opinion on the complainant's request3.

It declares that it is not competent with regard to the request for erasure or

the use by one of the parties of a document from the Y1 file in a procedure separate from

the one to which the file relates. However, the Ethics Commission notes two

ethical breaches on the part of the Y1 delegate in the way in which the

information concerning the complainant (contained in the email of January 10) was transmitted

to the mother of the child.

19. In his reply submissions sent on January 28, 2020, the complainant invokes for the first time a series of other violations of the GDPR (Articles 5.1.a, 5.1.f, 5.2, 6.1.a, 6.1.f, 12, 13, 17 and 25). In particular, it raises the question of the lawfulness of this processing, of the securing data, information and transparency of processing, non-compliance the one-month deadline for responding to his request and the lack of precautions in the data processing.

20. On February 11, 2020, the defendant sends its summary conclusions. Beyond elements already invoked in its conclusions, it defends itself from a violation of Articles 5 and 6 and 17. In particular, it details the regulations regarding the aid program. She further concedes that it did not properly inform the complainant as to the identity of the controller and data protection officer. The defendant also details the measures that are underway to improve its compliance with the GDPR.

21. Subsequently, the Complainant repeatedly requested a hearing before the Chamber. contentious. He wishes to present new documents at the hearing or by mail electronic. The Litigation Chamber replies that his file is being processed.

3 Ethics Commission, Opinion 216, 15 January 2019.

22. A hearing is organized on December 14, 2020 to which both parties are invited. They are informed that they can submit new documents until 7 December 2020.

23. On December 7, 2020, the complainant sent a new document to the Chamber litigation, as well as to the defendant. These are extracts from summary conclusions presented by the mother of the child in family court on March 18, 2019 in a proceedings between him and the plaintiff. The excerpts presented are largely censored and highlighted by the complainant. There appear several references to Y1 as well as to the findings or

remarks that he would have made.

24. The complainant also asked to be able to speak English during the hearing. This

request is refused by the opposing party given that several of these representatives do not

do not master this language.

25. The hearing takes place on December 14 in the presence of both parties. The complainant speaks in

English. An interpreter translates into French.

3) The hearing

26. During the hearing, apart from the arguments already put forward by the parties in their pleadings,

several elements were brought to the attention of the Litigation Chamber. These are

summarized below:

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Both parties agree on the fact that the use of data from the file of the

Y1 by the mother of the child in the proceedings before the family court constitutes a

violation of the obligation of confidentiality.

- A first agreement on the aid program has been signed between the complainant, the mother of

the child, and the Y1 in September 2017. This agreement ended in September 2018.

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According to the defendant, a second agreement was subsequently concluded until February 2019.

This is disputed by the complainant who indicates that this agreement was never concluded and that the

defendant cannot prove the existence of this agreement. According to the complainant,

the intervention of the Y1 should therefore have ended in September 2018.

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According to the defendant, the consultation of the file was carried out by the mother of the child.

For the plaintiff, it is actually the latter's lawyer.

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The defendant explains the measures implemented to guarantee confidentiality

file information. Each sheet of the file resumes the legislation in force on the

confidentiality. Persons who consult the file are accompanied by a delegate from the

Y1. This information, however, was not on the January 10, 2019 email, so

that would normally be the case. This rule has since been reminded to staff

of Y1.

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The defendant's lawyer believes that there may be a problem of

ethics in sending email. He should perhaps have been better circumstantiated and made a

reminder of the obligation of confidentiality. It is therefore a problem of ethics in the

communication, but not a problem with the GDPR. The delegate for the protection of

data speaks of a "hiccup" and believes that there were small flaws in the mode of

operation of the Y1, but that these defects have since been corrected. She adds that

major measures have been put in place to improve compliance with the GDPR and that this work

continues, in particular on the basis of the problems which arise.

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In view of the plaintiff's request, the defendant closed the case without further action after having

met with the complainant and the mother of the child in February 20194.

PLACE

II.

On the reasons for the decision

1) As to the disputed personal data processing and alleged violations.

27. The complaint lodged with the Data Protection Authority relates only to the

deletion request. However, during the exchanges of conclusions between the parties, the

Complainant raised possible violations of Articles 5.1.a, 5.1.f, 5.2, 6.1.a, 6.1.f, 12, 13,

17 and 25 GDPR. The defendant had the opportunity to defend itself vis-à-vis these

allegations. Some of his violations were also discussed during the hearing.

28. According to the terms of the complaint, the request for erasure relates to all data

complainant's personal data, as well as those of his son, which are contained in the databases

of data and other archives of the Y1. The Litigation Chamber considers that the data on

which are the subject of the complaint and the request for erasure are clearly identified.

4 The Litigation Chamber specifies that the defendant's summary conclusions indicate April 1 as the date of

closure of the file.

29. With regard to the processing of data whose legality has been questioned by the

complainant during the exchanges of conclusions, these relate to the data contained in

the Y1 file which concerns the complainant, his son and the mother of the child. Based on

documents in the file, the Litigation Chamber considers that this file contains in particular the

text of the agreement relating to the first aid program of September 18, 2017; the email of

January 10, 2019; and other information from the Y1 mentioned in the excerpts from

conclusions of the mother of the child of March 18, 2019 before the family court. It's about

documents that have been brought to the attention of the Litigation Division, including

existence is proven and whose treatment is contested on the basis of specific grievances.

30. With regard to the first aid programme, the Litigation Chamber notes that its

existence is recognized by both parties. The document states that "this agreement collects

the approval of all the persons concerned and is established between Mrs Z, Mr X

and the Advisor. The copy of the document, provided to the Litigation Chamber, is signed by

an Advisor. Spaces are provided for the signature of the child's mother and the

complainant. A copy of this document had been provided by the complainant to the APD when filing

of his complaint. This first aid program started on September 15, 2017 and ended

no later than September 15, 2018.

31. The Litigation Chamber notes that the argument relating to the existence of a second program

of aid closed in February 2019 is put forward by the defendant, but contested by the complainant.

In the absence of a document confirming the existence and signature of this second aid program,

the Litigation Chamber considers that its existence is not proven.

32. The Litigation Division noted some confusion during the hearing as to the period

during which the defendant would have continued its mission after the finalization of the first

aid program. Indeed, on that occasion, the complainant indicated on several occasions that

the processing of his data would have continued for a year and a half after the end of

defendant's intervention. However, the plaintiff acknowledges the existence of the first

assistance program which was in effect from September 15, 2017 to September 15, 2018.

activities of the defendant which are denounced by the plaintiff (in particular the meeting at

which he participated and the contact with the mother of the child by email) therefore took place four

months after the end of the first aid program and not a year and a half.

33. As it has had the opportunity to indicate in the past, in particular in its decision 3/2020

of February 21, 2020, the Litigation Chamber recalls that the communication of data to

personal character orally does not constitute data processing within the meaning of

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article 4.2 of the GDPR5. The possible transmission of information by this means cannot therefore

be considered by the House.

34. Furthermore, the further processing of her data by the mother of the child (in this case, the

reuse of data from the file to integrate them into its conclusions in the court of the

family) will not be examined by the Litigation Chamber. Indeed, the plaintiff did not

directed his complaint against the mother of the child, but against Y1. The mother of

the child is therefore not a party to the case. The Litigation Chamber cannot therefore

not pronounce on this point, even if it notes that the two parties agree to

say that the use of these data by the mother of the child in her submissions before the

family court is contrary to the obligation of confidentiality to which the documents of the

file are submitted.

35. The Litigation Division will first examine the legality of the processing of

data. It will first examine the lawfulness of the processing (section 2). Then she

will analyze the question of the duty of information and transparency and the transfer to third parties

(section 3). Finally, it will study the question of the security and confidentiality of the processing

(section 4).

Secondly, it will examine the complainant's request for erasure (section 5).

2) The lawfulness of the processing

36. With regard to the basis for the lawfulness of the processing, the plaintiff alleges a violation of the

Articles 6.1.a) and 6.1.f) and a lack of consent. The defendant justifies the

lawfulness of processing on the basis of Articles 6.1.b), c) and e). Article 6 is partially reproduced

below :

“Clause 6

Lawfulness of processing

5 Decision on the merits 3/2020 of 21 February 2020, p. 8. (https://www.autoriteprotectiondonnees.be/publications/decision-

as to-the-fund-n-03-2020.pdf)

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

filled:

a) 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;

c) 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.

2. Member States may maintain or introduce more specific provisions to adapt

the application of the rules of this Regulation with regard to processing for the purpose of complying with

points (c) and (e) of paragraph 1, determining more precisely the specific requirements applicable

processing and other measures to ensure lawful and fair processing, including in

other specific processing situations as provided for in Chapter IX.

3. The basis for the processing referred to in points (c) and (e) of paragraph 1 is defined by:

(a) Union law; Where

(b) the law of the Member State to which the controller is subject.

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The purposes of the processing are defined in this legal basis or, with regard to the processing

referred to in point (e) of paragraph 1 are necessary for the performance of a task carried out in the public interest or

the exercise of official authority vested in the controller. This legal basis

may contain specific provisions to adapt the application of the rules of this Regulation,

among others: the general conditions governing the lawfulness of the processing by the data controller

processing; the types of data that are subject to processing; the people concerned; the entities

to which the personal data may be communicated and the purposes for

which they can be; purpose limitation; retention periods; and operations

and processing procedures, including measures to ensure lawful and fair processing, such as

than those provided for in other specific processing situations as provided for in Chapter

IX. Union law or the law of the Member States pursues an objective of public interest and is

proportionate to the legitimate aim pursued. »

37. As it has already done in other decisions, the Litigation Chamber first recalls

that it is the responsibility of the data controller to identify a single basis of lawfulness on which

it bases its treatment. This requirement of a basis of lawfulness is one of the three main principles

– with those of loyalty and transparency - which it is responsible for implementing (article

5.1.a) of the GDPR – explained in recital 39 of the GDPR). Different consequences

arising from one or other basis of lawfulness, in particular in terms of rights for

data subjects, it is not permitted for the data controller to invoke one or

the other depending on the circumstances.6

38. For the Litigation Chamber, it is obvious that a public institution which, within the framework of

its legal mission, intervenes at the request of the parties or of a judge, in situations

with the aim of providing specialized assistance exercises a mission of public interest. The

constitution of a file containing personal information on the parties involved

(the parents and the child) constitutes data processing directly related to this mission

of public interest. The respondent therefore rightly argues that the processing may

rely on article 6.1.e) of the GDPR. The complainant's consent is therefore not required.

for this processing to be lawful, especially since this basis of lawfulness is not claimed

by the defendant.

39. With regard to the basis of lawfulness of Article 6.1.b, the Respondent does not explain the

contract to which it refers which would justify the disputed processing. Bedroom

litigation may consider that the contract in question is the first aid program signed between

the parents of the child and the defendant. However, it refers to developments in

6 Decision 28/2021 of March 23, 2021, § 44.

points 30 and 31 of this Decision, which demonstrate that the processing continued after the expiration of the first program. The basis of lawfulness of Article 6.1.b is therefore not applicable in this case.

40. For that of Article 6.1.c, the defendant does not explain the legal obligation to which it would be required and from which the processing in question would result. The Litigation Chamber cannot examine it in more detail.

41. Based on the above elements, it appears that the disputed data processing is based on the basis of lawfulness provided for in Article 6.1.e). However, it is necessary to check that the conditions provided for in that article are indeed met in the present case. Under Article 6.3.b) and of recital 45 of the GDPR, processing based on Article 6.1.e) must fulfill two conditions:

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The data controller must be entrusted with the performance of a mission in the public interest or relating to the exercise of official authority by virtue of a legal basis, whether in the law of the European Union or under the law of the Member State;

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The purposes of the processing must be necessary for the performance of the public interest mission or the exercise of public authority.

A legal basis

42. Recital 41 clarifies the quality of this legal basis. He is reproduced below:

“Where this Regulation refers to a legal basis or to a legislative measure, this does not necessarily mean 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 the "Court of Justice") and of the European Court of
human rights ".
43. It is therefore necessary to verify that the legal basis fulfills the criteria imposed. This standard
must be legally binding in domestic law. It must fulfill the conditions defined by
the European Court of Human Rights (hereinafter ECHR) on the basis of Article 8 of the
European Convention on Human Rights and Fundamental Freedoms. The treatment
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falling within the scope of European Union law, the legal basis must
also comply with Articles 7 and 8 of the Charter of Fundamental Rights of the Union
European Union, as interpreted by the Court of Justice of the European Union. In accordance
to these case law, the standard must be clear and precise and its application must be predictable
for litigants.
44. It is apparent from the defendant's submissions that it relied on two pieces of legislation
successive for the exercise of its mission. The first being Decree 1 and the second, Decree
2 which replaced the previous decree on January 1, 2019. These two texts govern the
public interest mission of the defendant. It is within the framework of these two decrees that
place the interactions between the plaintiff and the defendant.
45. In its conclusions, the defendant develops in particular the legal framework of Decree 2,
and the way in which a royal decree and a circular regulate its work. There is in particular
question of “first contact report”, of “social investigation report” which make
part of the file of the persons concerned. The defendant also details how
the right of access to this file is regulated. This legislation came into force on January 1
2019, i.e. after the expiry of the first aid programme. This program was therefore
regulated by Decree 1 about which the defendant was much less
talkative. However, it has reproduced an article of this decree, which regulates the right of access to the

case.

46. Since Decree 2 is currently in force and has been since 1 January 2019, this is the
legislation that was applicable at the time of the defendant's litigation actions, and
in particular the sending of the email of January 10, 2019. For these reasons, the Litigation Chamber
will only consider this legislation.

47. For the Litigation Chamber, it therefore appears that the public interest mission has
a legal basis in national law. The Litigation Chamber will therefore examine whether this basis
legal fulfills the requirements of the GDPR.

A clear, precise and predictable legal basis

48. In accordance with recital 41, this legal basis or legislative measure should be
clear and precise and its application should be foreseeable for litigants, in accordance with
to the case law of the Court of Justice of the European Union and the ECHR.

49. The ECHR has in several judgments established this notion of foreseeability of the legal basis,
in particular in its judgment Rotaru7. This judgment relating to the monitoring systems of
state security apparatus, its context is somewhat different from the present case. In
other cases, the ECHR has indeed indicated that it could draw inspiration from these principles, but
it considers that these relatively strict criteria, established and followed in the specific context
telecommunications surveillance are not applicable as such to all
business8.

50. The Court of Justice explains in its recent judgment of December 20, 2020 “that it is apparent from
Article 52(1) of the Charter, the latter allows for limitations on the exercise of these rights,
provided that these limitations are provided for by law, that they respect the content
essential to those rights and that, in compliance with the principle of proportionality, they are
necessary and effectively meet objectives of general interest recognized by the Union
or where necessary to protect the rights and freedoms of others”.9 The Court specified that, “for

meet the requirement of proportionality, regulations must provide clear rules

and specific rules governing the scope and application of the measure at issue and imposing requirements

minimal, so that the persons whose personal data are

concerned have sufficient safeguards to effectively protect these

data against the risk of abuse. This regulation must be legally binding

in domestic law and, in particular, indicate in what circumstances and under what conditions

a measure providing for the processing of such data can be taken, thereby ensuring that

the interference is limited to what is strictly necessary. »10

51. In its Fernandez-Martinez judgment, the ECHR recalled that the criterion of foreseeability of the law

is that "domestic legislation must use terms that are clear enough to indicate to all

sufficiently in what circumstances and under what conditions it empowers the

public authority to resort to measures affecting their rights protected by the Convention

»11

52. This criterion of foreseeability implies that certain constituent elements of the processing are

registered in the legal basis, including in particular the processing purpose. For the House

contentious, the central question in this case is to determine whether this basis

legal is foreseeable with regard to its purpose. This is indeed one of the main complaints

7 Eur. D.H., May 4, 2000, Rotaru v. Romania.

8 Eur. D.H., September 2, 2010, Uzun c. Germany, § 66.

9 Joined cases C-511/18, C-512/18 and C-520/18, La Quadrature du Net and others, ECLI:EU:C:2020:791, § 121.

10 Ibid., § 132.

11 Eur. D.H., June 12, 2014, Fernández Martínez v. Spain, § 117.

brought by the complainant, namely that the processing of his data continued without his knowledge

and against the original purpose.

53. The legal basis in question only rarely makes direct reference to the principles

of data protection law. Many essential elements of treatment are not

nevertheless remain directly identifiable in the legislation. An article of decree 2 by

example defines the competent administration as "administration Y1", which

identifies the data controller.

54. The purposes of the processing, although numerous, are developed either in the “The

fundamental principles and rights" of the decree, or with regard to this

file, in Book 3. Decree 2 covers several types of activities, which constitutes a

mission of public interest with a broad field of action. It necessarily follows that the

processing carried out in this context may be numerous and pursue purposes

relatively wide. The GDPR does not preclude this type of broad normative anchoring, since it

“does not require a specific legal provision for each individual processing operation. A

legal provision may be sufficient to found several processing operations based on a

legal obligation to which the controller is subject or when the processing

is necessary for the performance of a mission of public interest or relating to the exercise of

public authority. »12

55. Furthermore, in its conclusions, the defendant emphasizes that the data processed in the

part of the dossier are used for several purposes. Indeed, the defendant indicates that "the

data was collected so that the Y1 carries out its missions, namely not only to put

implementation of assistance programs but also keep the documents relating to this assistance to

provision, in the first place, of the children concerned. »13. The Litigation Chamber includes

of this formulation that the defendant refers to the measures provided for in Book 3 of Decree

2. The defendant then adds that "the collection and processing of data in the

service information program triggers certain mechanisms, in particular

accountants. The data collected then becomes proof of payment, to which

the Court of Auditors must have regard in the exercise of its missions”14.

56. It therefore appears that the processing pursues several distinct purposes. The first and

main purpose is the implementation of aid programs, which is one of the

missions of the defendant assigned to it by decree. A second purpose that follows

12 GDPR, recital 45.

13 Defendant's summary submissions, p. 5.

14 Ibid., p. 7.

directly from the latter, is to keep the documents relating to this aid available to

children concerned. Finally, a third purpose concerns the processing of data in a

accounting or archival purposes.

57. The Litigation Chamber recalls that by virtue of the documents presented to its knowledge (see

point 30), the first aid program ended in September 2018 and the treatment

of the complainant's data continued after that date. The defendant states that it is based

on the existence, of which it cannot prove, of a second aid program for

justify the continuation of this treatment.

58. However, it appears that the defendant continued to process the personal data

contained in the file, in particular through a meeting with the complainant which gave rise to

the transmission by email of certain personal data concerning him to the mother of

the child, beyond the end of the first aid program, on September 15, 2018 (see point

4). This continuation of the processing cannot be explained by the achievement of the two purposes

what are the keeping of documents available to the children concerned or the treatment in

an accounting or archiving purpose, since the actions carried out seem to be unrelated to

these.

59. The Litigation Division specifies that it is not competent to exercise control over the

broad legality of the defendant's actions. In this case, it does not know whether the

defendant was legally entitled, from the point of view of the law of its field of action, to

continue its mission after the expiration of this agreement, or in the absence of conclusion of a

new agreement.

60. It must nevertheless be noted that the processing which continued after the finalization of the

first program, was under the influence of decree 2, without it being able to enter

in one of the three identified purposes. It follows that the legal basis constituted by the decree

2 cannot be characterized as “foreseeable” since it does not allow the person

concerned, on reading it, to know all the circumstances and conditions under

which the defendant is authorized to process his data.

61. Due to this lack of predictability, the legal basis cannot be considered as a

valid basis of lawfulness within the meaning of Article 6.3 of the GDPR. The defendant cannot therefore

rely on Article 6.1.e to justify the processing and it is therefore unlawful. On

Based on these elements, the Litigation Chamber finds a violation of Articles

6.1.e) juncto 6.3.

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62. Moreover, the defendant having communicated both in its pleadings and during

hearing that the file had been dismissed, the Litigation Chamber considers that

the data it contains can no longer be processed in relation to the main purpose.

Their processing is limited to keeping the documents relating to this aid available to

children concerned or processing for accounting or archiving purposes. In other words,

the processing of data is, since the date of the closing of the plaintiff's file without follow-up

by the defendant, strictly limited to the achievement of these last two purposes.

3) Obligations of transparency and information

63. The complainant alleges breaches of the principles of information and transparency

in several respects. On the basis of articles 5,1a and 13,1,e), he raises a violation of the principle

of transparency because he was unaware that information contained in the Y1 file

would be forwarded to the mother of the child and her lawyer (point a). Without referring to

specific articles of the GDPR, the complainant repeatedly underlined that he believed that the

file with the Y1 was closed and there was no longer any data processing in progress

(item b). The complainant also considers that he was not informed of the identity of the person responsible

of processing and as to the elements contained in article 13.2 (point c).

64. In its conclusions, the defendant recounts in detail the legal provisions organizing the

right of access of the persons concerned to their file within the framework of its intervention. This

right of access is provided for in Decree 1 and in Decree 2. It also states that it does not

contest the fact of not having given sufficiently clear information as to the identity of the

controller and the Data Protection Officer. She develops

at length in point 3.4 of its conclusions, the measures that have been put in place since

2017 in order to adopt a digital policy and to comply with the

GDPR.

a) Transmission of information to the mother of the child or to her lawyer

65. In his submissions in reply, the Complainant considers that he was not properly informed

the fact that a lot of information and personal data concerning him would be

transmitted to the mother of the child, who would then have used them in her conclusions before

the family court. The defendant considers that its data were

collected by the mother of the child when exercising her right of access, which is provided for, both

in decree 1 than in decree 2 .

66. For the Litigation Division, the existence of a right of access to the documents in the file is clear.

This right of access is provided for and regulated explicitly in the two aforementioned decrees.

Even if this is not mentioned by the defendant, this right of access also exists

under Article 15 of the GDPR. The question examined here, however, relates to the information

and transparency about this right of access vis-à-vis the complainant.

67. The Litigation Chamber notes that the text of the first aid program mentions

specifically that "those associated with the measures taken have been informed of their

rights and obligations, in particular on the rights granted to them by the articles of the said decree

and article 1034ter of the judicial code". The article mentioned contains a first paragraph drafted

as following :

68. A third paragraph regulates the terms and cost of obtaining a copy of the file.

69. The reference to this article being explicit in the text of the first aid programme, the

Litigation Chamber considers that the defendant has fulfilled its information obligations in this regard.

regard and that the complainant was properly informed of the existence of this right.

b) The fact that the processing is still in progress

70. Without linking this to a specific violation of the GDPR, the complainant criticizes the fact

that he had not been informed that the processing of his data was still in progress

after the closure of the first aid program in September 2018. Given that the mission

of public interest of the defendant involves the processing of personal data, the

Litigation Chamber considers that this is a question that can be examined from the angle

transparency and the data subject's right to information.

71. This question is closely linked to the one developed above concerning the

foreseeability of the legal basis (see points 48 et seq.). However, having no information

demonstrating that the complainant would or would not have been clearly informed of the various

stages of processing, it cannot comment on a violation of the obligations of

transparency and information in this regard.

72. However, the Litigation Chamber questions the fact that one of the parties concerned by

a defendant's aid program could be so surprised by the actions of the

defendant and consider that he was not properly informed of the fact that the file was

still open. Moreover, without it having any information allowing it to know whether

this has been done or not, the Litigation Chamber considers that the entry into force of a

new legislation governing the public interest mission of the defendant during the

disputed data processing entails an obligation to inform the complainant.

c) Information as to the identity of the data controller and data protection officer

data.

73. The fact that the complainant was not clearly informed of the identity of the person responsible for

processing and of the data protection officer is not contested by the defendant15.

The Litigation Division therefore finds a violation of Articles 13.1.a and b) on

this point.

4) The security and confidentiality of the data processed by the defendant.

74. The question of data security and confidentiality is also raised

by the complainant, who considers that there has been a violation of Articles 5.1.a) and 25 of the GDPR.

75. In essence, the Complainant considers that there has been a breach of confidentiality obligations

and security because his personal data was transmitted without his knowledge to the mother of

the child and his lawyer and that he only discovered this when he read the conclusions in court

of the family. He also adds that the Y1 did not take the necessary precautions planned

to article 25.2 of the GDPR since these same people may have had access to their data

personal without his intervention. Likewise, it considers that the measures put in place

by the defendant are insufficient since in casu, they did not prevent the use of the

personal data in the context of another legal proceeding, while this is

contrary to its privacy policy. These allegations relate to different data

the plaintiff's personal information contained in the defendant's file, such as the data

contained in the email of January 10, 2019, the text of the agreement relating to the first program

help, as well as other personal data that have been included in the conclusions

in family court.

76. The Respondent does not specifically respond to the grievances regarding Article 25 in

its conclusions despite the fact that the complainant mentioned this article specifically. The

security and confidentiality of data has however been the subject of an intervention by the party

defendant during the hearing during which she explained the measures put in place to

guarantee the confidentiality of the file (see point 26). In particular, she indicated that all

15 Summary conclusions, p. 11

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sheets were stamped with a confidentiality clause and that this confidentiality was

frequently reminded of the people involved, right from the start of the procedure.

77. Article 25 of the GDPR in question is reproduced below:

Data protection by design and data protection by default

“Rule 25

1. Taking into account the state of knowledge, the costs of implementation and the nature,

scope, context and purposes of the processing as well as the risks, including the degree of probability

and severity varies, that the processing presents for the rights and freedoms of natural persons, the

controller implements, both at the time of determining the means of the

processing only at the time of the processing itself, the technical and organizational measures

appropriate, such as pseudonymization, which are intended to implement the principles relating

to data protection, e.g. data minimization, effectively and to match

the processing of the necessary guarantees in order to meet the requirements of this Regulation and of

protect the rights of the data subject.

2. The controller implements the technical and organizational measures

appropriate to ensure that, by default, only personal data that is

necessary with regard to each specific purpose of the processing are processed. This applies to the

amount of personal data collected, the scope of their processing, their duration of

preservation and accessibility. In particular, these measures ensure that, by default,

personal data is not made accessible to an indefinite number of people

without the intervention of the natural person concerned.

3. A certification mechanism approved under Article 42 may serve as an element for

demonstrate compliance with the requirements set out in paragraphs 1 and 2 of this article. »

78. As it has already established previously, for the Litigation Chamber, the existence of a right
access of the plaintiff, the mother of the child and the child to the file handled by the defendant
there is no doubt. The mother of the child was therefore entitled to consult this file and even
to obtain a copy, according to the provisions contained in the two decrees mentioned
previously and according to article 15.3 of the GDPR. Furthermore, certain documents in the file,
in essence, were to be sent to the complainant and the mother of the child. It's the case
in particular the agreement on the first aid program (see point 30).

79. However, as the defendant pointed out, these data are considered to be
being confidential and cannot be used in other proceedings. Both the complainant
that the defendant agrees that the mother of the child used his data
in a way that would be improper, given that she used them in her findings
in family court. As it has already mentioned, the Litigation Chamber is not
not called upon to comment on the regularity or otherwise of the data processing carried out by the mother
of the child (see point 34). Nevertheless, the Chamber may consider the question of whether
whether the defendant has, as data controller, implemented measures
technical and organizational measures necessary to ensure respect for the rights of individuals
concerned or aimed at limiting the accessibility of personal data (article 25.2 of the GDPR).

80. As it established in its decision 74/2020 of 24 November 2020, “the objective of the
data protection by design […] is to protect the rights of individuals
concerned and to ensure that the protection of their personal data is proper
(‘integrated’) into the treatment. What matters in this respect is that the ‘appropriate measures’
that a data controller must take are aimed at ensuring that the principles of
data protection are effectively integrated so that the risk of breach
the rights and freedoms of data subjects are restricted. »16

81. In examining its grievances, the Litigation Chamber wishes to make a distinction between the personal data contained in the email of January 10, 2019 (point a), those contained in the text of the aid agreement (point b) and those contained in the conclusions for the family court (item c). Finally, it will examine a possible limitation of the right of access to safeguard the rights of the complainant (point d).

a) The personal data contained in the email of January 10, 2019

82. The information contained in the email of 10 January unquestionably constitutes personal data relating to the complainant. His data is part of the file processed by the Y1. As established in section 3 above, the mother of the child, as an involved party in the procedure with the Y1, has a right of access to the file.

83. The Ethics Commission has issued an opinion on this question17. It indicates in particular "that a message conveyed to a parent, without any other form of contextualization or nuance, information relating to the attitude of the other parent, following an interview with the delegated, is not necessarily likely to promote the development of the beneficiaries

16 Decision 74/2020 of 24 November 2020, § 132.

17 Ethics Commission, Opinion 216, 15 January 2019.

help or prevent their disruption" which is a duty according to article 7.3 of the Code of deontology.

84. Furthermore, the Ethics Commission considers that the message in question "betrays a lack of caution in not reminding the recipient of the message of the character confidentiality of the information communicated and the prohibition to invoke it in a procedure distinct from that relating to the aid measure which is the subject of the file".

85. Counsel for the defendant conceded that there may have been a problem of ethics in sending email. He should perhaps have been better circumstantiated and made a reminder of the obligation of confidentiality. For the lawyer it is therefore a problem of

ethics in communication, but not a problem vis-à-vis the GDPR. At the time of
the hearing, the defendant's data protection officer referred to a "hiccup"
regarding this email.

86. While it is undisputed that these personal data were part of the file, to which the mother
of the child had access, this does not imply that they must be transmitted to him
automatically without the knowledge of the person concerned. The fact that this transmission by a
agent of the person in charge is made without a reminder of the rules of confidentiality, whereas this is according to
the defendant of a habitual rule, infringes the rights of the person
concerned.

87. For the reasons mentioned above, the Litigation Chamber considers that the transmission of
personal data of the complainant, by email, at the initiative of the defendant and without
reminder of the rules of confidentiality infringes the principle of confidentiality. Bedroom
litigation finds that this error was recognized by the defendant during the hearing.

88. In addition, the Litigation Chamber finds that on this occasion, the defendant transferred
initiative to the mother of the child, personal data concerning the complainant, which does not
can by definition, cannot be understood as an exercise of the right of access, which must be
exercised at the initiative of the person concerned. In the event that this information would have
been provided to the mother of the child for the purpose of transparency, there is no justification for this same
transparency was not applied to the complainant, who did not receive a copy of the email and was not
not informed of its dispatch. The fact that an email, such as the one being reviewed, which informs the
mother of the child, without the knowledge of the plaintiff, of the content of a conversation that the defendant
had with the latter poses an obvious problem of data confidentiality.

89. For the reasons mentioned above, the Litigation Chamber concludes that the party
defendant violated article 25, §1 and 2, by not respecting the measures
technical and organizational that it had itself put in place to ensure

respect for the rights of data subjects or those aimed at limiting

accessibility of personal data.

b) The personal data contained in the text of the agreement relating to the first program

help from September 2017 to September 2018

90. Regarding the text of the first aid program which has already been described

previously (see point 30), the Chamber finds that it does contain a clause of

confidentiality which recalls the possibilities of access to the file, specifying that it “does not

may be used in any procedure other than that relating to the aid measure which constitutes

the subject matter of the file from which it is taken”. This clause seems present on each sheet,

as explained by the defendant during the hearing.

91. A copy of this document was provided by the complainant to the DPA when filing its complaint.

The latter cannot therefore reasonably maintain that he was unaware that his information would be

transmitted to the mother of the child, since she herself is a party to the agreement. He is perfectly

logical that she therefore received a copy of this document for signature. Bedroom

therefore finds no breach of the principle of confidentiality on this point.

c) The other data from the Y1 file mentioned in the extracts from the conclusions

summary of the child's mother

92. The complainant also disputed the transmission of additional information from

of the Y1 file and which were used in the summary conclusions of the mother of

child in family court. The extracts from this document that the complainant brought

examined by the Litigation Chamber are fragmentary. Several sentences seem

however refer to the complainant. A full sentence mentioning the complainant is legible

as a whole. Numerous references are made to the findings or comments of the

defendant. A document entitled “Y1 balance sheet of September 28, 2017” is reproduced at

parts inventory.

93. A footnote to the Excerpt from Summary Findings in Family Court

specifies that the elements contained in the conclusions come from the Y1 file. She is

written as follows:

“The elements described herein emerge from the Y1 file (which cannot be produced but

the summary of which may be included in the conclusions) which can be consulted in their offices and which is not

confidential as Mr X claims, he could also have had access to it if he had made the

request, the public prosecutor's office may also take cognizance of the file with a view to the hearing of

pleadings; »

94. As has already been indicated on several occasions, the parties' right of access to the file is

clearly established in the relevant legislation, as well as in the GDPR. It is therefore normal that

the parties, including the mother of the child, have had access to the file. All these laws

also provide for a right to a copy of the file, which is in accordance with the GDPR (see point

68). The Litigation Chamber cannot therefore find a specific violation of Article 25 in

this regard.

d) A possible limitation of the right of access

95. The Litigation Chamber wishes, however, to make a few considerations on this point.

Based on the file, it considers that the risk of reusing the data in another

procedure than that before the defendant, is proven and this despite the clauses of

confidentiality. This risk is all the greater if the request for access to the file is the fact

of one of the parents, while the couple is in the process of divorce. In this case, the

measures put in place were insufficient since, according to both parties, the confidentiality

was actually severed by the child's mother. It is also for this reason that

the complainant asked the defendant to erase his data (see points 5 and 104).

In order to respond to the plaintiff's request, the Litigation Chamber considers that the

defendant should consider additional measures aimed at enforcing

the confidentiality clause and to reduce the risk of violation of this clause.

96. It recalls in particular that Article 15.4 of the GDPR provides that "The right to obtain a copy

referred to in paragraph 3 does not affect the rights and freedoms of others". The defendant

is therefore in a position to refuse to provide a copy of the documents in the file if it considers that the

risk of irregular reuse of its parts is too great or if one of the parties has already

makes use of the parts that is contrary to the confidentiality clause.

97. On the other hand, in connection with the delimitation of the purposes of the processing (see point 54 et seq.) and the

transparency as to whether the processing is still ongoing or not (see point

70 et seq.), the Litigation Chamber considers that the precise methods of consultation

should be able to be adapted according to the precise status of the file, depending on whether it is

considered to be open or closed without follow-up.

98. The Litigation Chamber is of the opinion that the right of access of the mother of the child to her

personal data contained in the file must be weighed against the right to

protection of the complainant's personal data and in particular his right to confidentiality

of its data. The data of these two data subjects being inseparably

scrums, it is in practice hardly possible to grant the former the benefit of its

right of access without encroaching on the rights of the second and in particular the right to confidentiality

of its data.

99. Consequently, the Litigation Division decides that, in view in particular of the breach of

confidentiality of the complainant's data already noted (see point 89), it is necessary to give

priority to the respect of her rights in relation to the right of access of the mother of the child and therefore

to limit the latter.

100. The Litigation Chamber nevertheless notes that in its submissions, the defendant

refers to the reform of the right of access which was undertaken within the framework of the decree 2 .

It cites the explanatory memorandum of the decree which explains the considerations which led to a

reform of the right of access to the file in decree 2 and mentions the requests of many

institutions to strengthen this right to information and access to files.

101. In order to take these factors into account and in view of the sensitivity of the matter, the Chamber litigation does not consider it wise to unilaterally impose on the defendant a limitation the right of access of the mother of the child. She therefore asks the defendant to inform her of the feasibility of imposing such a limitation. This would consist, as long as the file is closed without action, to a limitation of the right of access to the file to the only child concerned, in order to preserve the rights of the complainant, and respect for the confidentiality of his personal data staff.

102. Moreover, as it concluded previously, the Litigation Chamber recalls that the file having been closed without follow-up, it can only be processed for the remaining purposes, namely consultation by the child of his file and conservation for accounting purposes or archiving.

5) Request for deletion (article 17 of the GDPR)

a) The right to erasure

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103. As mentioned above, the complainant's request for erasure relates to all the personal data of the complainant, as well as that of his son, which would be contained in Y1 databases and other archives. It is based on article 17 of the GDPR which is partially reproduced below:

"Article 17 - Right to erasure ("right to be forgotten")

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;

[…]"

104. The complainant first requests this request for erasure, due to the fault

ethical code which, according to him, was committed18.

105. In response to this complaint, the defendant considers in its submissions that it cannot

grant the complainant's request for erasure since his data is necessary for

comply with a legal obligation or perform a task in the public interest, as provided for

Article 17.3.b).

106. Indeed, the defendant points out that the data was collected by the Y1 in

the purpose of carrying out its missions. In the interest of the children, these documents must be kept

in order to be able to trace the path of the file within the services. Delete this data

amount to preventing the defendant from carrying out its missions and would deprive certain

adult children of their right to access documents concerning them.

107. The defendant cites an article of Decree 2 in this regard, which is reproduced below:

108. According to the defendant, this retention of data is sometimes the only way

for some children to understand their life course and have access to information

about their childhood. She adds that this access to the file must be possible "at any

time" including after the files have been closed and the treatment provided in

execution of the Code.

109. Furthermore, the defendant adds that the plaintiff does not alone have the authority

parental control over his son and that the request should therefore in principle come from both parents

18 Letter from the complainant dated 14 June 2019.

who together have parental authority. She adds that the processing of data

contained in the file is also necessary for the other two purposes (accounting

and archiving. See points 54 and s).

110. In his submissions in response, the complainant indicates that he is making his request for erasure

for the following reasons :

-

The data is no longer required as the first aid program is

closed (article 17.1.a) of the GDPR),

-

He withdraws his consent on which he considers that the processing is based (article 17.1.b) of the

GDPR),

-

The data has been unlawfully processed given the clear violation of

confidentiality to which they would have been subject (article 17.1.d) of the GDPR).

111. It also emphasizes that the consent of both parents with parental authority

is necessary to process his son's data. The withdrawal of a parent's consent,

therefore results in a lack of valid consent for the processing.

112. He adds that the Y1 did not provide any effective assistance, and that its intervention was limited to

notification of an agreement relating to the first aid program of September 18, 2017 and that it

there was no concrete action on the part of the defendant. He therefore wonders about

the interest that his son would have in consulting his archives in the future, given that he has never

been in contact with the defendant. He concludes that nothing prevents the party

defendant to anonymize the data if it wishes to keep them for statistical purposes.

113. In its submissions in reply, the defendant responds to the plaintiff by pointing out

that the beneficiary of the right to consultation is the child himself and that the decision of

whether or not to consult the archives is up to him. The fact that the complainant considers it unlikely that his

son consults the archives one day cannot, according to the defendant, justify erasing the

data.

114. For the Litigation Chamber, it is therefore a question of examining two different questions. The

first question is whether the complainant alone can request the erasure of the

personal data of his son. The second concerns the applicability of the article

17.3.b) in the present circumstances, as claimed by the defendant. Indeed,

this article specifies that "paragraphs 1 and 2 do not apply insofar as this

treatment is needed:

[…]

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

the Union or by the law of the Member State to which the controller is subject,

or to perform a task in the public interest or in the exercise of authority

authority vested in the controller; »

The application of Article 17.3.b makes it impossible for the complainant to invoke Articles 17.1 a,

b and d).

115. The first question concerns the exercise of the right to erasure of the son's data by his

father (the complainant). The defendant invokes in this respect that, not being the sole holder

parental authority over his son, the plaintiff cannot, alone, exercise the right to erasure

for their personal data. The consent of both titular parents

spouses with parental authority, would be necessary for the exercise of this right. The complainant

argues that the consent of both parents is necessary to process the data

personal about her son. The withdrawal of the consent of one of the parents therefore makes this

invalid consent. This withdrawal of consent therefore allows the exercise of the right to

erasure on the basis of Article 17.1.b.

116. For the Litigation Chamber, the issue of consent as a basis for lawfulness and, by

Consequently, exercising the right to erasure on the basis of Article 17.1.b must be distinguished

the question of the valid exercise, by a parent, of the right to erasure of the data of a

child.

117. In the present case, as previously developed, the processing of personal data

carried out by the defendant is not based on the consent of the data subject,

but of course on Article 6.1.e) (see point 38). The Litigation Chamber will therefore examine
only the question of the valid exercise, by a parent, of the right to erasure for the
account of a child.

118. This issue is of significant importance in the case of the right to erasure. Indeed, at
Unlike the other rights provided for in Articles 15 to 22, the right to erasure is exhausted by
his exercise. It also entails the impossibility thereafter to exercise the other rights provided for
to Articles 15 to 22, since these require the processing of personal data, which
will have been erased by exercising the right provided for in Article 17. The right to erasure is,
by its very essence, for single and definitive use. These two characteristics therefore require
exercise a certain vigilance when a person holding parental authority
claims to exercise this right on behalf of a minor.

119. In view of these characteristics, the Litigation Chamber considers that the exercise of the right to
the erasure of a minor's data belongs in the first place to the minor himself, as
as data subject19. If this minor data subject does not have the
sufficient discernment to exercise this right, it may be exercised by holders of
parental authority. This exercise must be carried out in compliance with the rules relating to the authority
parental and exclusively in the interest of the child.

120. The Litigation Division finds in the present case that the request for erasure is not
not exercised by the child, but by his father. It appears from the documents in the file that the father
exercises this request alone, that is, without the approval of the child's mother, who seems
have joint parental authority. The complainant also does not justify how this
erasing the data would be in the interest of his son. It does not appear that the conditions
exercise of the right to erasure by one of the parents, on behalf of the child, are met
in this case.

121. Given that the complainant's request not only related to his son's data,

but also on his own personal data, this request must be examined more

in detail on this last point. With this in mind, the Litigation Chamber must examine

the applicability of the exception provided for in Article 17.3 to the specific case.

122. As it has already developed previously (see point 38), for the Litigation Chamber,

the defendant exercises a mission of public interest. The constitution of a file containing

personal information about the parties involved (the parents and the child) constitutes a

processing of data directly related to this mission of public interest within the meaning of Article

17.3.b. The erasure of his data would constitute a clear violation of the exercise of the mission

public interest of the defendant, since it would no longer allow it to dispose of

antecedents on the situation of the families who have been the subject of follow-up by this service. Those

background is essential for the defendant to have a correct image of

the family situation of the people she cares for. In general, it is not excluded

that the defendant be seized again of the same family situation several years after a

first action. The erasure of the data of a data subject when

first intervention would greatly undermine the Y1's ability to carry out its mission

public interest properly.

19 Article 17.1 of the GDPR indeed begins as follows: “The data subject has the right to obtain from the controller

processing the erasure, as soon as possible, of personal data concerning him" (this is the Chambre

litigation that underlines).

123. It follows that, due to the application of Article 17.3.b, the Complainant cannot invoke

a reason provided for in Article 17.1 or 17.2 to request the erasure of the data concerning him.

b) The response time from the data controller

124. The complainant also considers that the controller did not respond to his

request for erasure only after a period of 6 months and the sending of an email (on May 9, 2019) and

two letters from lawyers (including the first sent on June 14, 2019), which would be contrary to

Article 12.3 of the GDPR which establishes a maximum period of one month.

125. The defendant argues that the Ethics Commission is a

independent commission whose mission is to give opinions on ethical matters

in this sector. Given that the request for erasure did not, according to the defendant,

been made to the right person, she was not able to reserve a

useful sequel.

126. The Litigation Chamber notes that the two requests for erasure sent by

letters were directed to the Ethics Committee20. She replied to the lawyers

of the complainant on July 5, 2019, declaring that he did not consider himself competent to respond to the

request of the complainant and not be competent for the request for erasure (see point 6

and footnote 2).

127. The Litigation Division considers that a person concerned cannot be expected to

systematically directs people to the designated person within an institution to exercise their

rights. However, this does not exclude that she must go to the institution which is indeed the

controller.

128. The Chamber considers that this condition is not necessarily satisfied in casu, since

that the complainant went to a Ethics Commission which was probably not

not responsible for the processing and who indicated July 5, that is to say within a shorter period

one month after the first letter, not being competent to examine the request

erasure of the complainant.

The Litigation Chamber cannot therefore find a violation of Article 12.4 on this point.

20 Not having had access to the email of May 9, 2019, the Litigation Division cannot examine its content and does not know whe

already a deletion request. See on this subject notes 1 and 2, above. Furthermore, in its letter of January 8, 2020, the

Ethics Committee indicates that this email did not contain a request for erasure. The first certain date for

the request for deletion must therefore be considered as that of the first letter sent on June 14, 2019.

129. The Litigation Chamber notes, however, that the sending of two different emails,

respectively to the plaintiff and his lawyers, the second of which contained a response as to

request for erasure but not the first, is certainly not likely to facilitate the

the complainant's understanding of the follow-up to his file.

130. The Litigation Chamber also considers that breaches of the duty to inform

and transparency observed in point 73 of this decision could have greatly contributed to the

fact that the complainant was directed to the wrong institution. Correct information at

subject of the identity of the controller and the data protection officer

would no doubt have facilitated the complainant's exercise of his rights.

6) Regarding corrective measures and sanctions

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

1° dismiss the complaint without follow-up;

2° order the dismissal;

3° order a suspension of the pronouncement;

4° propose a transaction;

(5) issue warnings or reprimands;

6° order to comply with requests from the data subject to exercise these rights;

(7) order that the person concerned be informed of the security problem;

8° order the freezing, limitation or temporary or permanent prohibition of processing;

9° order the processing to be brought into conformity;

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

ci to data recipients;

11° order the withdrawal of accreditation from certification bodies;

12° to issue periodic penalty payments;

13° to impose administrative fines;

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

international body;

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

data on file;

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

Datas.

132. The Litigation Chamber recalls that under Article 221.2° of the Law of 30 July 2018

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

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personal nature, it cannot impose a fine on the defendant, since the latter is

a public authority within the meaning of Article 5.1° of the same law.

133. On the basis of the elements developed above, the Litigation Division noted a

violation of articles 6.1.e) juncto 6.3, 13.1.a and b), as well as articles 25.1 and 25.2 of the

GDPR.

134. With regard to the violation of Articles 6.1.e) juncto 6.3, the Litigation Chamber is

aware of the fact that the defendant is under an obligation to continue these missions

legal in its field of action. It considers that the defendant cannot be

held responsible for shortcomings in the legal basis which imposes on it or invests it with certain

assignments. In order not to disproportionately interfere with the pursuit of a

essential public service mission, the Litigation Chamber decides not to order

the suspension or interruption of processing, as permitted by Article 100, §1, 8° of the

ACL.

135. It nevertheless considers that bringing the lawfulness basis into conformity is essential

so that it notably meets the criteria of foreseeability developed above (see points

48 et seq.). For this reason, the Data Protection Authority will contact for this purpose

with the legislator and/or the government of the federated entity.

136. The violations of Articles 13.1.a and b) were clearly admitted by the party

defendant. The Litigation Chamber is not in a position to determine whether this violation

concerned only the complainant or whether it concerned all the persons concerned

with regard to whom these articles had to be respected.

137. The Litigation Chamber also found a clear violation of Articles 25.1 and 25.2

of the GDPR. It notes, however, that the defendant acknowledged that the processing

had not been subject to the necessary technical and organizational measures. According to

defendant, this problem was recognized as such and the necessary measures were

taken.

138. In conclusion from the foregoing, and in view of all the circumstances of the case, the Chamber

Litigation considers that the reprimand (i.e. the call to order referred to in Article 58.2.b) of the GDPR)

is in this case, the effective, proportionate and dissuasive sanction which is necessary with regard to the

defendant21.

21 As it has already had the opportunity to specify in several decisions, the Litigation Chamber recalls here that

the warning sanctions a failure which is likely to occur: see. Article 58.2.a) of the GDPR in this regard.

139. Further to what she explained previously (see points 95 et seq.), she also asks

the defendant to inform him of the feasibility of imposing, as long as the plaintiff's file

is filed without further action with the defendant, of a limitation of the right of access to the file

to the only child concerned, in order to preserve the rights of the complainant, and respect for the

confidentiality of their personal data.

7) Publication of the decision

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

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

the Data Protection Authority by deleting the identification data

directly from the parties and persons cited, whether natural or legal.

FOR THESE REASONS,

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

- pronounce against the defendant a reprimand on the basis of article

100.1, 5° LCA, for violations of articles 13.1.a and b), as well as articles 25.1

and 25.2 GDPR;

-

dismiss the complaint for the other aspects on the basis of article 100.1,

1° ACL.

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

contracts (Brussels Court of Appeal) within 30 days of its notification, with

the Data Protection Authority as defendant.

(Sé) Hielke Hijmans

President of the Litigation Chamber