CNIL.
COMMISSION NATIONALE
INFORMATIQUE & LIBERTÉS

[redacted]

A/R ref. [redacted]

File processing: Paris, 7 August
2024 [redacted]
N/Ref : [redacted]
Referral N° [redacted]
(to be included in all correspondence)

Dear Madam,

You have lodged a complaint with the Commission Nationale de l'Informatique et des Libertés (CNIL) against Mr [redacted].be website (hereinafter "[redacted]"), concerning the difficulties encountered in exercising your right to the deletion of your personal data.

On 28 September 2021, you contacted the publisher of the [redacted] website to request, on the basis of Article 17 of the GDPR, the deletion of your personal data from the [redacted] website relating to remuneration for your professional activity with [redacted]. You stated that the data in question related to your private professional activity as an employee and that, in your opinion, there were no compelling legitimate grounds for continuing to process this data. You therefore also objected to the processing of this data for reasons relating to your particular situation. You subsequently extended your request for erasure to all information relating to your earnings as an employee in the private sector between 2018 and 2020.

On 18 October 2021, the publisher of the [redacted] website refused to grant your request on the grounds that the publication of this information on its website contributes to the transparency that is essential for the proper functioning of democracy with regard to the allocation of certain mandates, functions and professions. The publisher of the [redacted] site pointed out that the information on its site was taken from public and official sources and stated that you were subject to the obligation to declare your mandates and remuneration under the *law of 2 May 1995 relating to the obligation to file a list of mandates, functions and professions and a declaration of assets.*

As you know, in application of the mechanisms for cooperation between authorities provided for by the General Data Protection Regulation (GDPR), the CNIL has forwarded your complaint to the Belgian data protection authority (hereinafter "*Belgian authority*"), which is competent to deal with requests relating to [redacted] insofar as the data controller is established in Belgium.

On 13 June 2022, the Litigation Division of the Belgian authority decided that this case could be dealt with on its merits. As a result, you have had several opportunities to discuss your case with the Litigation Division of the Belgian authority and to put forward your arguments. The same was true for the publisher of the [redacted] website.

Following these exchanges, and pursuant to Article 77 of the General Data Protection Regulation (GDPR), I hereby inform you of the decision adopted in this matter. The CNIL is responsible for informing you of the decision taken, in accordance with articles 56.6, 60.7 and 60.8 of the GDPR.

By way of introduction, we inform you that under the terms of Article 17(1)(c) of the GDPR, the data subject has the right to obtain from the controller the erasure, as soon as possible, of personal data relating to him or her where "*(...) (c) the data subject objects to the processing pursuant to Article 21(1) and there are no compelling legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2) of the GDPR*".

However, the right to protection of personal data is not an absolute right; it must be balanced against other fundamental rights. In this respect, publications on the web fall within those protected by the right to freedom of expression and information (Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 11 of the EU Charter of Fundamental Rights).

Article 17(3)(a) of the GDPR provides that Article 17(1) shall not apply insofar as processing is necessary for the exercise of the right to freedom of expression and information, thus providing, in the very terms of Article 17 of the GDPR, for a system of exceptions which involves a balancing of the fundamental right to freedom of expression and information on the one hand and the fundamental right to the protection of personal data on the other.

In the course of its case law, the European Court of Human Rights (hereinafter "ECHR") has developed a series of relevant criteria that must be taken into account when balancing competing fundamental rights, namely the contribution to a debate of general interest, the reputation of the person concerned, the subject-matter of the report, the previous conduct of the person concerned, the content, form and impact of the publication, the manner and circumstances in which the information was obtained and its truthfulness.

Furthermore, the ECHR has regularly emphasised in its case law the indispensable role of the press, pointing out that its main function is to disseminate debates of general interest and that it also fulfils a secondary role, that of revealing and bringing to the attention of the public information likely to arouse interest and give rise to such a debate within society.

While in the case law of the ECHR, this role is generally played by the press and professional journalists, the Court is gradually recognising this function for private individuals. The Court considers that the role of these actors may be similar in importance to that of the press and that they may therefore benefit from the high level of protection usually afforded to the press.

Similarly, the CJEU gives a broad interpretation to concepts related to freedom of expression, such as journalism. In its "*Buivids*" judgment of 14 February 2019, the CJEU does not lay down any requirement as to the professional capacity of the person or organisation invoking the benefit of the journalistic exception. In particular, the purpose of the publication must be that of a journalist inspired by the public interest.

An analysis of the case law of the CJEU and the ECHR clearly shows that the exercise of an activity of a journalistic nature, and the resulting protection, should not be reserved exclusively for professional journalists. However, this same analysis also reveals that anyone who engages in journalistic activity and intends to benefit from the high level of protection afforded to freedom of the press is required to respect at least the most obvious rules of ethics.

In the light of these introductory remarks on the applicable case law and regulations, the Belgian authority took its decision on the basis of the following elements.

Firstly, the disputed processing essentially consists of the retranscription on [redacted] of your publicly available declarations of mandates and remunerations. In fact, you have held two mandates subject to the obligation to declare your mandates and remuneration under *the law of 2 May 1995 relating to the obligation to file a list of mandates, functions and professions and a declaration of assets*, so that your remuneration has been published in the *Moniteur belge* and on the website of the Court of Audit pursuant to this legal obligation.

Secondly, you are subject to this declaration obligation because you have held, and still hold, two senior management positions with a company that is essentially owned by the Belgian and French States. However, the *Act of 14 October 2018 amending the legislation on declarations of mandates and assets with regard to transparency of remuneration, extension to public directors, electronic filing and control*, extended the obligation to declare to so-called "*public*" directors who exercise certain functions with companies over which one or more public authorities exercise a dominant influence.

Thirdly, [redacted] argued that the purpose of publishing your remuneration is the same as that intended by the legislator through the laws governing the obligation to declare and publish mandates and remuneration. The publication of the information at issue does not serve any purpose other than that for which it was initially collected by virtue of the legal obligation to which the complainant is subject, in this case for the purposes of transparency in public management.

Fourthly, your request for deletion was not addressed to an established newspaper, but to publications on a citizens' website run by a person who is not a professional journalist. However, the processing at issue was carried out for journalistic purposes within the meaning of the aforementioned case law of the CJEU and the ECHR. [redacted] made your earnings available free of charge on its website in order to inform the public and draw its attention to the issue of public interest. The sole purpose of this processing is to inform the public about these issues of public interest. It also appears that [redacted] has respected certain essential rules of journalistic ethics by verifying and, where necessary, correcting the information it relays from official and public sources.

Fifthly, exercising your right to erasure relates to the processing of information that contributes to this debate of general interest and is therefore of interest to the public. The public interest in having this information is all the more important insofar as you are a public figure subject to the aforementioned obligation to declare, and play a role in Belgian public life.

Sixthly, the objective of transparency in public management pursued by [redacted] and *a fortiori* by the legislator when he adopted the aforementioned laws, requires that all types of remuneration, whether public or private, be accessible to the public. It appears that only the ranges of your private remuneration are published on [redacted]. The public interest in having access to the disputed information is to highlight, in particular, a possible conflict of interest. While it is true that publication of the functions performed would already expose a conflict of interest to a certain extent, in this context, publication of the ranges of other remuneration you receive as a public administrator is not disproportionate. In fact, it allows the public to form a more complete picture of potential conflicts of interest and to make relevant comparisons between private and public income.

Seventhly, the information at issue is not particularly sensitive and its dissemination by [redacted] does not have any significant repercussions, particularly as it is already publicly available and has, moreover, been actively communicated by yourselves in order to fulfil your obligations; you therefore could not have been unaware that this information was intended to be published by the Court of Auditors. While publication on [redacted] may create additional risks in comparison with official publication insofar as the scope of this

In this case, the risks are limited and would not justify restricting the legitimate rights of third parties to access this information in the public interest.

Finally, given that the information relayed on the [redacted] website comes from official sources and that you yourself are the source of this information, the accuracy of the disputed information is not called into question. It has been noted that the disputed information is recent and therefore still relevant, since it refers to professional activities that you have been carrying out since [redacted]

In the light of all these factors, the Belgian authority noted that the [redacted] website, by relaying and bringing together the disputed information in such a way as to make it more accessible to the public than official sources, was participating in a debate of public interest on the issue of transparency in public management and the fight against conflicts of interest and corruption and that, consequently, the publication on this site of your remuneration as an employee in the private sector appeared necessary for the exercise of the right to freedom of expression and information pursuant t o Article 17.3. a) of the GDPR.

Consequently, and in accordance with the provisions of Article 17 of the GDPR, I hereby inform you that, in agreement with the European data protection authorities, your complaint has been rejected.

We would like to inform you that the Belgian authority considers this case to be important and intends to publish/replay the decision adopted on its website once your personal data has been deleted.

Yours faithfully

[redacted]

Subject to the applicant's right to bring an action, CNIL decisions may be appealed to the Conseil d'État within two months of their notification, increased :

- one month for residents of Guadeloupe, French Guiana, Martinique, Réunion, Saint-Barthélemy, Saint-Martin, Mayotte, Saint-Pierre-et-Miquelon, French Polynesia, the Wallis and Futuna Islands, New Caledonia and the French Southern and Antarctic Territories;

- two months for people living abroad.