



Litigation Chamber

Decision 128/2024 from 9 October 2024

File number : DOS-2022-05276

Subject : order to comply with a data erasure request following publication in an online telephone directory

The Litigation Chamber of the Data Protection Authority, composed of Mr. Hielke HIJMANS, sole chair;

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 *on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC* (General Data Protection Regulation), hereinafter referred to as the "GDPR."

Having regard to the Act of December 3, 2017 *establishing the Data Protection Authority*, hereinafter "DPA";

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

Given the documents in the case;

Made the following decision regarding:

The Complainant: X, hereinafter "the complainant"

Defendant: Y, hereinafter "the defendant"

I. Facts and procedure

1. The subject of the complaint concerns, on the one hand, the legality of the online publication of the personal data, and, on the other hand, the failure to give effect to a data erasure request from the complainant.
2. On January 14, 2021, a complaint was communicated to the Belgian Data Protection Authority by the Polish Office for the Protection of Personal Data (*Urząd Ochrony Danych Osobowych*)¹, in accordance with the cooperation procedure referred to in Article 60 of the GDPR, after which the GBA accepted its role as lead supervisory authority (LSA) on March 13, 2023.
3. In the complaint, the complainant denounces, on the one hand, the unlawful publication of his personal data and, on the other hand, the impossibility to request a data erasure. The complainant allegedly wrote to the defendant on March 20, 2022, upon which he received a link on behalf of the defendant that directed him to an online form to *update* his personal data on the site.² This form required certain personal data before the data deletion request could be submitted. One of the first steps in this online form was to choose whether the individual is an "*individual*" or a "*business*." However, the complainant indicated that the link to make a data erasure request was only possible to fill in in the capacity of an enterprise ("*business*"), which the complainant is not. The complainant abandoned his attempt hereafter and then filed a complaint with the Polish authority.
4. The complaint contains the Complainant's original attempt to remove its personal data³, as well as the defendant's response⁴. Screenshots are attached to demonstrate that the personal data were indeed published by the Defendant. The Litigation Chamber further notes that at the time of making the present decision, the complainant's personal data is still available online.⁵
5. Pursuant to article 95, § 2, 3° of the DPA as well as article 47 of the DPA's internal rules of procedure, the parties may request a copy of the file. If either party wishes to make use of the possibility to consult and copy the file, it should contact the secretariat of the Litigation Chamber, preferably at litigationchamber@apd-gba.be.

¹ IMI notification: A56174508.

Polish reference: DS.523.2979.2022 / 41.2.5.1-1399/21 / 43.2.1-8951/20.

² See [...]

³ "[...], your website published my personal data without my consent. Please remove my personal information from your website. I have never been an entrepreneur and I am not entrepreneur. [...]"

⁴ "To enable our colleagues to process your request, may we ask you to kindly complete the [...] form attached. Once your form is fully completed and validated and after checking your data by our services, we will implement your request as soon as possible. Click on this link to access the form "...": [...]"

⁵ [...]

(consultation: Jan. 29, 2024).

II. Justification

6. Based on the documents supporting the complaint, the Litigation Chamber finds that the Complainant attempted to exercise its right to data deletion on March 18, 2022 using a contact form on the site. To this, the Defendant responded on March 21, 2022 by referring to another form that the data subject was required to complete before executing a data erasure request. This form lists two capacities in which the data subject can act to have their personal data amended; either as an "*individual*," or as a "*business*." Since the data subject is an "*individual*," but failed to click on this option, the data subject discontinued his data erasure request using the form. Because the data subject experienced such difficulties in making a data erasure request, the Litigation Chamber concludes - *prima facie*, admittedly - that the Defendant may have violated Article 12.2 GDPR, as well as Article 17.1 GDPR.
7. Article 17.1 GDPR provides that the data subject may obtain erasure of personal data concerning him from the controller without unreasonable delay, and the controller is obliged to erase personal data without unreasonable delay when, among other things, the personal data are no longer necessary for the purposes for which they were collected or otherwise processed, or the data subject withdraws his consent, or raises an objection pursuant to Article 21 GDPR.
8. Pursuant to Article 12.2 GDPR, the controller shall facilitate the exercise of the data subject's rights under Articles 15 to 22 GDPR. Since in the present file the data subject fails to submit a request for data erasure, even if this is due to a technical defect that prevents him from changing his capacity to that of an "*individual*," then, according to the Litigation Chamber, Article 12.2 GDPR may not be complied with.
9. The Litigation Chamber is of the opinion that, based on the above analysis, it should be concluded that the Defendant may have violated the provisions of the GDPR, which justifies proceeding to a decision *in this case on the basis of* Article 95, § 1, 5° of the DPA, more specifically to order the Defendant to comply with the Complainant's exercise of his right to data erasure (Article 17 GDPR).
10. The present decision is a *prima facie* decision taken by the Litigation Chamber pursuant to Article 95 of the DPA on the basis of the complaint filed by the complainant, under the "*procedure prior to the decision on the merits*"⁶ and not a decision on the merits by the Litigation Chamber within the meaning of Article 100 of the DPA.

⁶ Section 3, Subsection 2 of the DPA (Articles 94 to 97).

11. The Litigation Chamber thus decided that pursuant to Article 58.2.c) GDPR and Article 95, § 1, 5° of the DPA, the Defendant should be ordered to comply with the data subject's request to exercise his rights, specifically the right to data erasure ("*right to oblivion*") as provided in Article 17 GDPR.
12. The purpose of the present decision is to notify the Defendant of its potential breach of the provisions of the GDPR and to give it the opportunity to conform to the aforementioned provisions.
13. However, if the Defendant does not agree with the contents of this *prima facie* decision and believes that it has factual and/or legal arguments that could lead to a different decision, it may submit a request to the Litigation Chamber for a hearing on the merits of the case to be held within 30 days of the notification of this decision to the e-mail address litigationchamber@apd-gba.be. The enforcement of the present decision shall be suspended, if necessary, during this period.
14. In the event of a continuation of the examination of the merits of the case, the Litigation Chamber shall invite the parties, pursuant to articles 98, 2° and 3° *in conjunction with* article 99 of the DPA, to submit their defenses as well as to attach to the file any documents they deem useful. If necessary, the present decision shall be definitively suspended.
15. Finally, for the sake of completeness, the Litigation Chamber notes that a hearing on the merits of the case may result in the imposition of the measures listed in Article 100 DPA⁷.

⁷ Article 100. § 1. The Litigation Chamber shall have the power to:

1° dismiss a complaint;

2° order the disbarment;

3° order the stay of judgment;

4° propose a settlement;

5° formulate warnings and reprimands;

6° order that the data subject's requests to exercise their rights be complied with; 7° order that the individual be notified of the security problem;

8° order that processing be temporarily or permanently frozen, restricted or prohibited; 9° recommend that processing be brought into compliance;

10° order the rectification, restriction or deletion of data and its notification to data recipients; 11° order the withdrawal of accreditation of certification bodies;

12° impose penalty payments; 13° impose administrative fines;

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

15° transfer the file to the public prosecutor's office in Brussels, which will notify it of the action taken on the file;

16° case-by-case decision to publish its decisions on the Data Protection Authority's website.

16. Given the importance of transparency regarding the decision of the Litigation Chamber, this decision shall be published on the website of the Data Protection Authority. In contrast, it is not necessary for this purpose to directly publish the identification data of the parties.
17. In accordance with Article 57 DPA and considering the language in which the complaint was filed, English is used as the language of proceedings. Since the Defendant has its registered office in bilingual language area, a Dutch and French translation of this decision is also provided.

FOR THESE REASONS,

the Litigation Chamber of the Data Protection Authority shall decide, subject to the submission of a request by the Defendant for a hearing on the merits in accordance with Article 98 et seq. DPA, to:

- Pursuant to **Article 58.2.c) GDPR** and **Article 95, §1, 5°, DPA**, order the Defendant to comply with the data subject's request to exercise his rights, in particular the right to data erasure (Article 17.1 AVG), and proceed with the erasure of the personal data in question, and to do so within the period of thirty days from the notification of this decision;
- Order the Defendant to notify the Data Protection Authority (Litigation Chamber) of the outcome of this decision by e-mail within the same time period via the e-mail address litigationchamber@apd-gba.be; and
- in the absence of the Defendant's timely implementation of the above, to hear the case ex officio on the merits in accordance with **Articles 98 et seq. DPA.**

Pursuant to Article 108, § 1 of the DPA, this decision may be appealed to the Market Court (Court of Appeal Brussels), with the Data Protection Authority as defendant, within a period of thirty days from the notification.

Such an appeal may be filed through an adversarial petition that must contain the entries listed in Article *1034ter* of the Judicial Code⁸ . The adversary petition must be filed with the Registry of the Market Court in accordance with Article *1034quinquies* of the Judicial Code⁹ , or through the e- Deposit informatics system of Justice (Article *32ter* of the Judicial Code)

(se). Hielke Hijmans

Chairman of the Litigation Chamber

⁸ The petition shall state under penalty of nullity:

- 1° the day, month and year;
- 2° the name, first name, residence of the applicant and, where appropriate, his capacity and his national register or company number;
- 3° The name, first name, residence and, where appropriate, capacity of the person to be summoned; 4° The object and brief summary of the means of the claim;
- 5° the court before whom the action is brought; 6° the signature of the applicant or his attorney.

⁹ The petition and its appendix, in as many copies as there are parties involved, shall be sent by registered mail to the clerk of the court or filed at the registry.