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Advocate General's Opinion in Case C-755/21 P | Kočner v Europol

Advocate General Rantos: Europol and a Member State in which damage occurred in relation to unlawful data processing can be jointly and severally liable

Following the murder in Slovakia on 21 February 2018 of a Slovak journalist and his fiancée, Mr Ján Kuciak and Ms Martina Kušnírová, the Slovak authorities carried out a broad investigation. At the request of the Slovak authorities, the European Union Agency for Law Enforcement Cooperation (Europol) retrieved data stored on two mobile telephones which allegedly belonged to Mr Marian Kočner and on a USB storage device. Europol forwarded its scientific reports and delivered a hard drive containing the retrieved encrypted data.

In May 2019, the press made available to the public information concerning Mr Kočner originating from those mobile telephones, including transcripts of private conversations. In addition, in one of its reports, Europol stated that Mr Kočner had been in custody since 20 June 2018 for suspected financial crime and that his name was, *inter alia*, directly linked to the 'so-called mafia lists' and the 'Panama Papers'.

Mr Kočner brought an action before the General Court of the European Union seeking compensation in the amount of € 100 000 for the non-material damage he claims to have suffered. By judgment of 29 September 2021,¹ the General Court dismissed his action. It found, first, that Mr Kočner had not proved that there was a causal link between the alleged damage and Europol's conduct and, second, that he had not adduced any evidence capable of establishing that the 'so-called mafia lists' had been drawn up and held by an EU institution and in particular by Europol. Mr Kočner brought an appeal before the Court of Justice.

In his Opinion today, the Advocate General, Mr Athanasios Rantos, states that the case **affords the Court its first opportunity to rule**, among other things, on the nature of Europol's non-contractual liability and, specifically, **on the existence of a special system of joint and several liability between Europol and the Member State in which damage has occurred in relation to incorrect data processing by Europol or that Member State**.

Mr Rantos begins by recalling that, concerning non-contractual liability, the European Union must make good any damage caused by its institutions or by its servants in the performance of their duties. That rule is applicable to Europol. According to the Europol Regulation, any individual who has suffered damage as a result of an unlawful data processing operation has the right to receive compensation for damage suffered, either from Europol or from the Member State in which the event that gave rise to the damage occurred, in accordance with its national law. The **(non-binding)** preamble to that regulation states that it may be difficult for the individual concerned to determine whether damage suffered as a result of unlawful data processing is a consequence of action by Europol or by a

¹ Judgment of 29 September 2021, *Kočner v Europol*, T-528/20 (see press release [No 165/21](#)).

Member State and that Europol and the Member State in which the event that gave rise to the damage occurred should therefore be jointly and severally liable.

In that connection, Mr Rantos notes that, in principle, non-contractual joint and several liability means that, if the harmful act is attributable to several persons, they are jointly and severally liable to pay compensation for the damage.

He recalls that the interpretation of a provision of EU law requires account to be taken not only of its wording, but also of the context in which it occurs, as well as the objectives and purpose pursued by the act of which it forms part.

The Advocate General analyses all the relevant legal provisions and comes to the conclusion that **EU law introduces a system of joint and several liability between Europol and the Member State concerned for damage suffered as a result of unlawful data processing as a consequence of action by Europol or that Member State.**

Consequently, the Advocate General proposes that the judgment of the General Court be set aside in so far as it ruled out any causal link between the damage alleged by Mr Kočner and possible conduct on the part of Europol solely because, for a certain period of time, both Europol and the Slovak authorities had been in possession of the data contained in the mobile telephones in question.

However, **regarding the alleged inclusion of Kočner on the 'so-called mafia list', the Advocate General proposes that the Court dismiss the appeal**, confirming the General Court's reasoning.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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