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Judgment of the Court in Case C-755/21 P | Kočner v Europol

Data processing: Europol and the Member State in which damage has occurred arising from unlawful data processing carried out in the context of cooperation between Europol and that Member State are to be jointly and severally liable for that damage

A data subject who is seeking to obtain full compensation from Europol or the Member State concerned for damage he or she has suffered must establish only that, in the context of cooperation between those two entities, unlawful data processing which has caused him or her to suffer damage has been carried out. That data subject is not required to establish additionally to which of those two entities that unlawful processing is attributable.

Following the murder of a Slovak journalist and his fiancée, Mr Ján Kuciak and Ms Martina Kušnírová, in Slovakia on 21 February 2018, the Slovak authorities conducted an extensive investigation. At the request of those authorities, the European Union Agency for Law Enforcement Cooperation (Europol) extracted the data stored on two mobile telephones allegedly belonging to Mr Marian Kočner. Europol sent its scientific reports to those authorities and delivered to them a hard disk containing the encrypted data it had extracted. In May 2019, the Slovak press published information relating to Mr Kočner from his mobile telephones, including transcripts of intimate communications. In addition, in one of its reports, Europol stated that Mr Kočner had been detained on suspicion of a financial offence since 2018 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 from Europol in the amount of € 100 000 for the non-material damage which he claims to have suffered as a result of the unlawful processing of his data. By judgment of 29 September 2021 ¹, the General Court dismissed his action. It concluded, first, that Mr Kočner had not established a causal link between the alleged damage and Europol's conduct and, second, that he had not proved that the 'so-called mafia lists' had been drawn up and kept by Europol. Mr Kočner brought an appeal before the Court of Justice.

In its judgment, the Court of Justice holds that EU law lays down rules rendering Europol and the Member State in which the damage resulting from unlawful data processing occurred jointly and severally liable in the context of cooperation between them. As a first stage, the joint and several liability of Europol or the Member State concerned can be put in issue before, respectively, either the Court of Justice of the European Union or the national court with jurisdiction. Where appropriate, there may be a second stage before the Management Board of Europol in order to determine the 'ultimate responsibility' of Europol and/or the Member State concerned for the compensation awarded to the individual who has suffered the damage.

In order for such joint and several liability to be incurred in the first stage, the individual concerned must show only that, in the course of cooperation between Europol and the Member State concerned, unlawful data processing that caused him or her to suffer damage has been carried out. Contrary to what the General

Court held, **there is no need for him or her to establish additionally to which of those two entities that unlawful processing is attributable.** Consequently, **the Court of Justice sets aside the judgment of the General Court** in so far as concerns that point.

Ruling on the dispute itself, the Court of Justice holds that the unlawful data processing in the form of the disclosure to unauthorised persons of data relating to intimate conversations between Mr Kočner and his girlfriend led to that data being made accessible to the public by the Slovak press. The Court of Justice concludes that that unlawful processing infringed Mr Kočner's right to respect for his private and family life and his communications and adversely affected his honour and reputation, which caused him non-material damage. The Court of Justice grants Mr Kočner compensation in the amount of € 2 000 as reparation for that damage.

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 and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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