



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-136/17
G.C. and Others v CNIL

Advocate General Szpunar proposes that the Court should hold that the operator of a search engine must, as a matter of course, accede to a request for the de-referencing of sensitive data

The operator of a search engine must, however, ensure protection of the right of access to information and of the right of freedom of expression

A dispute has arisen between, on the one hand, Ms G.C., Mr A.F., Mr B.H. and Mr E.D. and, on the other hand, the Commission nationale de l'informatique et des libertés (French Data Protection Authority) ('the CNIL') with regard to four of that authority's decisions refusing to put the company Google Inc. on formal notice to de-reference various links, included in the results list displayed following a search made on the basis of their names, to web pages published by third parties. The web pages in question contain, inter alia, a satirical photomontage of a female politician posted online under a pseudonym, an article referring to one of the interested parties as the public relations officer for the Church of Scientology, the placing under investigation of a male politician and the conviction of another interested party for sexual assaults against minors.

After the interested parties had brought proceedings before it challenging the refusal of the CNIL to put Google on formal notice to carry out the 'de-referencing' requested, the Conseil d'État (Council of State) (France) referred several questions to the Court of Justice concerning the interpretation of the directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

By its first question, the Conseil d'État seeks to ascertain whether, having regard to the responsibilities, powers and specific capabilities of the operator of a search engine, the prohibition imposed on other data controllers on processing data falling within certain specific categories (such as political opinions, religious or philosophical beliefs, sex life) is also applicable to such an operator. In his Opinion delivered today, Advocate General Maciej Szpunar begins by stating that the provisions of Directive 95/46 should be interpreted in such a way as to take account of the responsibilities, powers and capabilities of a search engine. Thus, he points out that the prohibitions and restrictions laid down by Directive 95/46¹ cannot apply to the operator of a search engine as if it had itself placed sensitive data on the web pages concerned. Since the activity of a search engine logically takes place only after (sensitive) data have been placed online, those prohibitions and restrictions can therefore apply to a search engine only by reason of that referencing and, thus, through subsequent verification, when a request for de-referencing is made by the person concerned.

The Advocate General accordingly proposes that the Court should find that the prohibition imposed on other data controllers on processing data falling within certain specific categories applies to the activities of the operator of a search engine.

The second question referred to the Court by the Conseil d'État asks whether an obligation is imposed on the operator of a search engine systematically to de-reference material. The Advocate General points out that Directive 95/46 lays down a prohibition on the processing of sensitive data.

¹ Article 8 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

Consequently, he states that the prohibition on the operator of a search engine processing sensitive data **requires that operator to accede, as a matter of course, to requests for de-referencing relating to links to web pages on which such data appear, subject to the exceptions provided for by Directive 95/46.**² The Advocate General takes the view that the exceptions to the prohibition on the treatment of sensitive data, laid down by Directive 95/46, apply even though some of the exceptions appear to be more theoretical than practical as regards their application to a search engine.

The question of the derogations authorised under freedom of expression³ and their reconciliation with the right to respect for private life is then addressed by the Advocate General. He proposes that the Court should reply that, **where there is a request for de-referencing relating to sensitive data, the operator of a search engine must weigh up, on the one hand, the right to respect for private life and the right to protection of data and, on the other hand, the right of the public to access the information concerned and the right to freedom of expression of the person who provided the information.**

Lastly, the Advocate General addresses the question of the request for de-referencing relating to personal data which have become incomplete, inaccurate or obsolete, such as, for example, press articles relating to a period before the conclusion of judicial proceedings. The Advocate General proposes that the Court should hold that, in such circumstances, it is necessary for the operator of a search engine to conduct a balancing exercise on a case-by-case basis between, on the one hand, the right to respect for private life and the right to protection of data under Articles 7 and 8 of the Charter of the Fundamental Rights of the European Union and, on the other hand, the right of the public to access the information concerned, while **taking into account the fact that that information relates to journalism or constitutes artistic or literary expression.**

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: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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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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² Article 8 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

³ Article 9 of Directive 95/46/CE of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).