



## PRESS RELEASE No 142/23

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Advocate General's Opinion in Case C-115/22 | NADA e.a.

### **Anti-doping and data protection: Advocate General Ćapeta considers that a national anti-doping authority which publishes personal data of a doped professional athlete on the internet is not in breach of the GDPR <sup>1</sup>**

*The resulting interference with the right to data protection may be justified by the preventive aim of such a publication.*

An Austrian professional middle-distance runner was found guilty of acting in breach of Austrian anti-doping rules. The Austrian Anti-Doping Legal Committee (Österreichische Anti-Doping Rechtskommission, ÖADR) declared as invalid all results that the athlete had obtained during the period at issue, revoked any entry fees and/or prize money and banned her from participating in sporting competitions of any kind for a period of four years. That decision was confirmed by the ÖADR and by the Independent Arbitration Committee, Austria (Unabhängige Schiedskommission, USK).

The Independent Anti-Doping Agency (Unabhängige Dopingkontrollereinrichtung, NADA) also published the athlete's name, her anti-doping rule violations, and the period of suspension in a table of suspended athletes on its publicly accessible website.

The athlete submitted a request for review of that decision before the USK. That body seeks guidance inter alia on whether the publication of the personal data on the internet of a doped professional athlete is compatible with the GDPR.

In today's Opinion, Advocate General Tamara Ćapeta first addresses the admissibility of that reference. The Advocate General considers that **the USK constitutes a 'court or tribunal'** within the meaning of Article 267 TFEU. In fact, the Advocate General considers that, **in the circumstances of the case at hand, that body even constitutes a 'court or tribunal' against whose decisions there are no legal remedies** under the third subparagraph of Article 267 TFEU. **The USK was thus even obliged to make a reference.**

On the question of substance, Advocate General Tamara Ćapeta first **considers that the GDPR does not apply to the factual circumstances of the case.** According to her, **anti-doping rules primarily regulate sport as sport.** They are concerned with sport's social and educational functions, **rather than its economic aspects.** There are **presently no EU law rules that relate to the anti-doping policies** of the Member States. Without even an indirect link between the anti-doping policies and EU law, the GDPR cannot regulate such processing activities. For that reason, the Advocate General considers that **the factual circumstances of this case fall outside the scope of**

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<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 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) (OJ 2016 L 119, p. 1).

**Union law, and thus outside the scope of the GDPR.**

**In the alternative**, Advocate General Tamara Čápetá considers that **the GDPR does permit the processing of personal data in a pre-determined context without the need for any individualised proportionality assessment**. The Austrian legislature's decision to require the disclosure to the general public of personal data of professional athletes breaching the applicable anti-doping rules is thus not subject to an additional proportionality assessment in each individual case. **The interference with the rights of professional athletes brought about by public disclosure can be justified by the preventive aim of deterring young athletes from committing doping offences and of informing relevant stakeholders.**

Advocate General Tamara Čápetá also explains that, **in modern societies, the only way to satisfy a generalised disclosure obligation such as that imposed by the Austrian legislature in the case at hand is through publication on the internet**. Mere print publication can no longer be considered an adequate means of making information available to the general public. Requesting solely offline publication of the information at issue would be akin to circumventing the obligation to inform the public. **Disclosing the athlete's name, the anti-doping rule violation at issue and the suspension imposed on her on the publicly available website of a national anti-doping authority is, during the time of her suspension, adequate and necessary for achieving the preventive function of deterrence and informing stakeholders.**

**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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