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Advocate General's Opinion in Case C-474/24 | NADA Austria and Others

Advocate General Spielmann: the publication on the internet of the name of any professional athlete who has infringed the anti-doping rules is contrary to EU law

The principle of proportionality requires account to be taken of the specific circumstances of each individual case

Four professional athletes who infringed ¹ the anti-doping rules challenge, ² before an Austrian court, the fact that their names, the sporting discipline concerned, the duration of their exclusion from sporting events and the reasons for that exclusion ³ were or were going ⁴ to be published online, that is to say, on the websites of the Austrian independent anti-doping agency (NADA Austria) ⁵ and the Austrian Anti-Doping Legal Committee (the ÖADR). ⁶

In Austria, such publication is provided for by law. It aims, first, to deter athletes from committing infringements of the anti-doping rules and thus to prevent doping in sport. Second, it aims to prevent circumvention of the anti-doping rules by informing all persons likely to sponsor or engage the athlete in question that he or she is suspended.

The four athletes concerned submit that that publication contravenes the General Data Protection Regulation (GDPR). ⁷

In that context, the Austrian court asked ⁸ the Court of Justice to interpret the GDPR.

In his Opinion, formulated following an in-depth analysis of the wording, the context and the objectives of the GDPR, ⁹ Advocate General Dean Spielmann has serious doubts as to the need for the publication at issue in the light of the objectives pursued.

In his view, publishing the relevant name, but limited to the relevant bodies and sports federations, accompanied, for example, by pseudonymised publication on the internet, would make it possible to achieve both those objectives in a way that is less prejudicial to the protection of personal data and more consistent with the principle of data minimisation.

Furthermore, the combination of the various elements of the publication (reference to a name, unlimited scope, systematic and automatic nature of the publication) is liable, in certain circumstances, to result in an interference with the personal data protection rights of the individuals concerned such that it does not meet the requirements of a proper balancing of the different interests involved.

The Advocate General is therefore of the view that an obligation to publish personal data, such as that at issue, is permissible only in so far as, having regard to the objectives of deterrence and avoidance of circumvention of the anti-doping rules, it remains proportionate, in particular as regards the scope and

duration of publication, in the light of the specific circumstances at issue. It is for the Austrian court ¹⁰ to determine whether that is the case.

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 EU law or the validity of an EU 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.

Unofficial document for media use, not binding on the Court of Justice.

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

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¹ According to the findings of the ÖADR or the Austrian Independent Arbitration Committee (USK), see note 6.

² After their applications to NADA Austria and to the ÖADR, and their complaints to the Austrian Data Protection Authority were unsuccessful.

³ The ÖADR also publishes any prohibited substance at issue, even though that is not required by law.

⁴ According to the Advocate General, it cannot be ruled out that a complaint made to a supervisory authority within the meaning of the GDPR may be admissible, despite the fact that the processing of the data subject's personal data has not yet taken place at the time his or her complaint is lodged, but is not purely hypothetical.

⁵ NADA Austria is a public utility company with limited liability which acts as an independent anti-doping body.

⁶ The ÖADR is an independent public committee which conducts anti-doping proceedings, that is to say, disciplinary proceedings for the respective competent federal sports federation in accordance with the anti-doping rules in force of the competent international sports federation. Its decisions may be reviewed by the USK.

⁷ [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 (General Data Protection Regulation).

⁸ After the Court of Justice dismissed a request for a preliminary ruling made by the USK as inadmissible (see judgment of 7 May 2024, *Nada and Others*, [C-115/22](#) and Press Release [No 80/24](#)).

⁹ As part of that analysis, the Advocate General also reaches the conclusion that the GDPR is indeed applicable to the publication at issue. Moreover, he notes that that publication may concern health data where the name of the prohibited substance is indicated. In addition, it may, depending on the severity of the penalty imposed, concern personal data relating to criminal convictions and offences. In both cases, the data would enjoy enhanced protection.

¹⁰ Moreover, the Advocate General considers that the controller concerned, like NADA Austria and the ÖADR, must carry out, prior to the processing of data, a case-by-case balancing of the interests involved if that is necessary in order to process personal data in a manner consistent with the GDPR.