



Press and Information

General Court of the European Union
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Judgment in Case T-528/20
Kočner v Europol

The General Court dismisses the action brought by M. Kočner against Europol in the context of the investigation into the murder of the journalist J. Kuciak and his fiancée M. Kušnírová

Mr Kočner has not established that the disclosure of his personal data by the Slovak press and on the Internet and the inclusion of his name in the 'Mafia lists' are imputable to Europol

Following the assassination in Slovakia, on 21 February 2018, of a Slovak journalist and his fiancée, J. Kuciak and M. Kušnírová, the Slovak authorities conducted an extensive investigation.

In the context of that investigation and at the request of the Slovak Authorities, the European Union Agency for Law Enforcement Cooperation (Europol) extracted data stored on two mobile telephones allegedly belonging to Mr Kočner and on a USB storage medium.

On 13 January 2019, Europol communicated to the Slovak authorities a report on the operations carried out on the USB storage medium. On 21 June 2019, Europol communicated to the Slovak authorities the definitive scientific reports relating to the operations carried out on the mobile telephones at issue.

Following the publication in the Slovak press and on the Internet in May 2019 of a very considerable volume of information, in particular transcriptions of private conversations, originating inter alia from the mobile telephones at issue, Mr Kočner brought an action before the General Court of the European Union. In his action, he claimed compensation of EUR 100 000 from Europol in respect of the non-material harm he had allegedly suffered, in particular on account of damage to his personal and professional reputation and to his right to private and family life resulting from the infringement by Europol of its obligations in respect of data protection. First, Mr Kočner asserts that Europol disclosed to the public the information at issue before the abovementioned scientific reports were even communicated to the Slovak authorities. Secondly, he claims that in the abovementioned report of 13 January 2019, Europol included his name in the 'Mafia lists'.

In today's judgment, the General Court points out, first of all, that the European Union may incur non-contractual liability for damage allegedly caused by its agencies, such as Europol, only if **three cumulative conditions** are fulfilled, namely the unlawfulness of the conduct alleged against the agency, the fact of damage and the existence of a causal link between that conduct and the damage complained of.

Next, so far as concerns the alleged disclosure by Europol of transcriptions of private conversations extracted from the two abovementioned mobile phones, the General Court notes that the evidence provided by Europol undermines Mr Kočner's claim that, at the time of their publication in the Slovak press, only Europol was supposed to be in possession of those transcriptions. It is apparent from minutes dated 23 October 2018 that, at that date, one of Europol's members of staff delivered to the Slovak authorities a hard drive containing the preliminary results in the form of data acquisitions and data extractions taken from the mobile telephones at issue. Consequently, the General Court observes that, on 23 October 2018, the Slovak authorities were also in possession of the disputed data and that, as of that date, Europol was no longer the only body to be in possession of the data.

In addition, the General Court notes that Europol did not at any point have at its disposal the communications at issue in a decrypted and intelligible form inasmuch as it only carried out the acquisition and extraction of encrypted data contained on the mobile telephones at issue. It was the Slovak authorities which, after receiving the encrypted data, decrypted it and rendered it intelligible.

It follows that, given the absence of evidence, **the disclosure of the transcriptions at issue cannot be considered to be imputable to Europol**, so that it cannot be found that there is a sufficiently well-established causal link between the damage claimed and any conduct by that agency.

Lastly, as regards the harm which Mr Kočner considers himself to have suffered as a result of Europol's inclusion of his name in the 'Mafia lists', the General Court notes that Mr Kočner has not provided any evidence capable of establishing that those lists were drawn up and held by Europol. Likewise, Mr Kočner has not adduced any evidence such as to demonstrate that the information published by the Slovak press concerning the alleged inclusion of his name in the 'Mafia lists' originates from the abovementioned report of 13 January 2019.

Moreover, the General Court points out that, even prior to the assassination of Mr Kuciak and Ms Kušnírová, the Slovak press occasionally presented Mr Kočner as a 'mafioso' and not only, as he claimed, as a 'controversial businessman', ruling out that such a presentation of him has its origin in the abovementioned report of 13 January 2019.

Consequently, the General Court holds that **the damage allegedly resulting from the development of the terms used by the Slovak press when they mention Mr Kočner is not imputable to Europol**.

In those circumstances, the General Court **dismisses Mr Kočner's action in its entirety**.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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

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