Judgement of the European Court of Justice in Case C-300/21

Not every breach of the GDPR automatically entitles to compensation

Starting in 2017, Österreichische Post AG ("Austrian Post") collected information on the political affinities of the Austrian population. Using an algorithm, it defined "target group addresses" according to sociodemographic criteria. An affected citizen who had not consented to the processing brought an action for damages, initially before the Austrian courts. The Court of Justice of the European Union (ECJ) responded to a request for a preliminary ruling from the Austrian Supreme Court.

The data thus collected enabled Austrian Post to establish that a particular citizen had a high degree of affinity with a particular Austrian political party. However, that data processed was not communicated to any third parties. The citizen in question, who had not consented to the processing of his personal data, claimed that he had suffered great annoyance, loss of confidence and a sense of exposure as a result of having been attributed a degree of affinity with the party in question. He asked the Austrian courts for compensation in the amount of €1,000 for the non-material damage he claimed to have suffered.

National courts referred to the ECJ

The Austrian Supreme Court expressed its doubts as to the scope of the right to compensation for material or non-material damage which the General Data Protection Regulation[1] (GDPR) establishes for infringement. The Austrian Supreme Court asked the ECJ whether the mere infringement of the GDPR is sufficient to give rise to that right for compensation, and whether the non-material damage suffered must reach a certain threshold of seriousness to establish the right to compensation. Furthermore, the Court

[1] *Article 15 of 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; hereinafter "the GDPR").*

asked the ECJ what Union law requirements exist for determining the amount of damages.

In its judgement dated 4 May 2023, the ECJ stated, first of all, that it is clear that the right to compensation provided for by the GDPR is subject to three cumulative conditions: an infringement of the GDPR, material or non-material damage resulting from that infringement and a causal link between the damage and the infringement. Accordingly, not every breach of the GDPR in itself gives rise to a right to compensation. Any other interpretation would be contrary to the clear wording of the GDPR. In addition, according to the recitals of the GDPR that specifically refer to the right to compensation, an infringement of the GDPR does not necessarily give rise to damage, and there must be a causal link between the infringement in question and the damage suffered in order to establish a right to compensation.

An action for damages therefore differs from other remedies provided for in the GDPR—in particular those that provide for the imposition of fines, for which the existence of individual damage does not need to be proven. Secondly, the ECJ held that the right to compensation is not limited to non-material damage that reaches a certain threshold of seriousness. The GDPR does not contain such a requirement; such a limitation would be contrary to the EU legislature's broad understanding of the concept of "damage".

Moreover, making compensation for non-material damage dependent on a materiality threshold could affect the coherence of the relevant regime introduced by the GDPR. Indeed, the gradation on which the possibility of obtaining damages would depend could be prone to fluctuations depending on the assessment of the courts involved. Thirdly and finally, the ECJ noted that the GDPR does not contain any rules governing the assessment of damages. It is therefore for the legal system of each member state to lay down the detailed rules governing actions for the protection of the rights which individuals derive from the GDPR and, in particular, the criteria for determining the amount of compensation to be awarded in that context, provided that the principles of equivalence and effectiveness are respected.

In this regard, the ECJ emphasized the compensatory function of the right to compensation provided by the GDPR, noting that this instrument is intended to ensure full and effective compensation for the damage suffered.

Conclusion

A mere breach of the GDPR does not automatically give rise to a right to compensation. However, nor does the right to compensation depend on the non-material damage suffered reaching a certain threshold of seriousness.

Source: ECJ press release of 4 May 2023

Note

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