

Appeal brought on 9 March 2022 by Nemea Bank plc against the order of the General Court (Ninth Chamber, Extended Composition) delivered on 20 December 2021 in Case T-321/17, Niemelä and Others v ECB

(Case C-181/22 P)

(2022/C 237/39)

Language of the case: English

Parties

Appellant: Nemea Bank plc (represented by: A. Meriläinen, asianajaja)

Other parties to the proceedings: Heikki Niemelä, Mika Lehto, Nemea plc, Nevestor SA, European Central Bank, European Commission

Form of order sought

The Appellant claims that the Court should:

- set aside the order under appeal;
- refer the case back to the General Court to be properly adjudicated, but to a different chamber with an entirely different composition of judges, given the bias and non-respect of the Appellant's fundamental rights by the chamber having issued the said order, and
- order the ECB to pay the costs.

Pleas in law and main arguments

First ground of appeal: the General Court erred in law by erroneously assuming that there is no need to adjudicate in case T-321/17, erroneously failed to take into consideration that the purported effect *ex tunc* of the ECB decision of 30 June 2017 violated Art. 263 TFEU and erroneously assumed that the Appellant has no interest in the annulment of the ECB decision of license withdrawal of 23 March 2017.

Second ground of appeal: the General Court erred in law with respect to numerous infringements of essential procedural requirements.

Third ground of appeal: the General Court failed to take into consideration the violation of the Appellant's rights pursuant to Art. 47 of the Charter prior to the commencement of the procedure and the continuing lack of an effective representation of the Appellant during the proceedings.

Fourth ground of appeal: the General Court failed to take into consideration the violation of the Appellant's rights pursuant to Art. 41 of the Charter in deciding the application for damages to be inadmissible.

Fifth ground of appeal: the General Court erred in law by failing to take into consideration the Appellant's rights provided by the Art. 340 TFEU when deciding that the application for damages is inadmissible.

Request for a preliminary ruling from the Amtsgericht München (Germany) lodged on 10 March 2022 — JU v Scalable Capital GmbH

(Case C-182/22)

(2022/C 237/40)

Language of the case: German

Referring court

Amtsgericht München

Parties to the main proceedings

Applicant: JU

Defendant: Scalable Capital GmbH

Questions referred

1. Is Article 82 of the General Data Protection Regulation⁽¹⁾ to be interpreted as meaning that the right to compensation, including the determination of the amount of that compensation, does not have a punitive character, in particular, that it has no general or specific dissuasive function, but a purely compensatory function and, in some instances, a satisfaction function?
- 2.a Is the right to compensation for non-material damage to be determined on the basis that it also has an individual satisfaction function — understood here to mean the private interest of the injured party in seeing the behaviour that caused the damage penalised — or does it have only a compensatory function — understood here to mean the function of compensating for the detrimental effects suffered?
- 2.b.1. If it is to be assumed that the right to compensation for non-material damage has both a compensatory and a satisfaction function: is it to be determined on the basis that the compensatory function has structural precedence over the satisfaction function or, at least, that the relationship between the two is that of the rule and the exception? Does that mean that it can have a satisfaction function only when the infringement is deliberate or a result of gross negligence?
- 2.b.2. If the right to compensation for non-material damage does not have a satisfaction function: when determining that compensation, is additional weight attributed only to deliberate or grossly negligent data protection infringements deemed to be contributory factors?
3. Is the compensation for non-material damage to be determined on the basis of a structural order of precedence or, at least, a rule-exception relationship, which attributes less weight to the detrimental effects of a data infringement than to the detrimental and painful effects associated with a physical injury?
4. Assuming that damage has been sustained, can a national court award only minimal compensation, which may be perceived by the injured party or generally as merely symbolic, in the light of the non-serious nature of the damage?
5. Are the consequences of the compensation for non-material damage to be assessed on the basis that identity theft within the meaning of recital 75 of the General Data Protection Regulation requires an offender to have actually assumed the identity of the person concerned, that is to say to have somehow impersonated that person, or does the mere fact that offenders have gained possession of data that identify the person concerned constitute such identity theft?

⁽¹⁾ 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).

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 10 March 2022 — IK v KfH Kuratorium für Dialyse und Nierentransplantation e.V.

(Case C-184/22)

(2022/C 237/41)

Language of the case: German

Referring court

Bundesarbeitsgericht