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

Parties to the main proceedings

Applicant: IK

Defendant: KfH Kuratorium für Dialyse und Nierentransplantation e.V.

Questions referred

1. Must Article 157 TFEU and Article 2(1)(b) and the first sentence of Article 4 of Regulation 2006/54/EC ([1]) be interpreted as meaning that a provision in a national collective agreement to the effect that the payment of overtime supplements is available only for hours worked in excess of the standard working time of a full-time employee entails a difference in treatment as between full-time employees and part-time employees?

2. In the event that the Court answers Question 1 in the affirmative:

   (a) Must Article 157 TFEU and Article 2(1)(b) and the first sentence of Article 4 of Directive 2006/54 be interpreted as meaning that, in such a case, a finding that the difference in treatment affects considerably more women than men is not sustained by the fact alone that the part-time employees are made up of considerably more women than men, but requires in addition that the full-time employees be made up of considerably more men or a significantly higher proportion of men?

   (b) Or does something different also follow, in the case of Article 157 TFEU and Directive 2006/54, from the findings of the Court of Justice in paragraphs 25 to 36 of the judgment Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zaktad Opieki Zdrowotnej w Krakowie, ([2]) according to which a difference in treatment even within a group of persons with disabilities may be covered by the 'concept of "discrimination"' referred to in Article 2 of Directive 2000/78/EC? ([3])

3. In the event that the Court answers Question 1 in the affirmative and Questions 2(a) and 2(b) to the effect that, in a case such as that in the main proceedings, it may be found that the difference in treatment in respect of pay affects considerably more women than men:

   Must Article 157 TFEU and Article 2(1)(b) and the first sentence of Article 4 of Directive 2006/54 be interpreted as meaning that, it may be a legitimate aim for the parties to a collective agreement, by means of a provision such as that referred to in Question 1, on the one hand, to pursue the aim of deterring the employer from mandating overtime and rewarding recourse to employees to an extent in excess of that contracted by means of an overtime supplement, but, on the other hand, also to pursue the aim of preventing full-time employees from being treated less favourably than part-time employees and to provide for that reason that supplements are payable only for overtime worked in excess of a full-time employee's working hours in a calendar month?

4. Must Clause 4(1) of the Framework Agreement on part-time work annexed to Directive 97/81/EC ([4]) be interpreted as meaning that a provision in a national collective agreement to the effect that the payment of overtime supplements is available only for hours worked in excess of the normal working hours of a full-time employee entails a difference in treatment as between full-time employees and part-time employees?

5. In the event that the Court answers Question 4 in the affirmative, must Clause 4(1) of the Framework Agreement on part-time work be interpreted as meaning that there may be an objective ground for the parties to a collective agreement, by means of a provision such as that referred to in Question 4, on the one hand, to pursue the aim of deterring the employer from mandating overtime and rewarding recourse to employees to an extent in excess of that contracted by means of an overtime supplement, but, on the other hand, also to pursue the aim of preventing full-time employees from being treated less favourably than part-time employees and to provide for that reason that supplements are payable only for overtime worked in excess of a full-time employee's working hours in a calendar month?

([1]) Directive of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ 2006 L 204, p. 23).
([2]) Judgment of 26 January 2021 (Case C-16/19, EU:C:2021:64).
([3]) Council Directive of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).
([4]) Council Directive of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ 1998 L 14, p. 9).