

Unlawful transfer of personal data - Articles 79 and 82 of the General Data Protection Regulation (GDPR) - Claim for damages - Freedom of choice between administrative and civil courts - Principle of effective judicial protection - Article 47 Charter of the fundamental rights of the EU - Right to an effective remedy and to a fair trial

(Appellant against the Minister for Legal Protection)

Summary

The appellant in this case claims compensation for the unlawful transfer of his medical data to the Healthcare Disciplinary Board. From the prevailing privacy legislation (since 25 May 2018 the GDPR and the Dutch GDPR Implementation Act), the Administrative Jurisdiction Division of the Council of State (Division) understands that it must be possible to appeal to both the administrative and civil courts 'to submit a claim to compensation for damage as a result of a breach of the GDPR by an administrative body.' In such a case, however, the administrative court must follow the rules laid down in Article 6:106 of the Civil Code and the case law of the Supreme Court.

Juridical Framework

The Division considers that the GDPR is directly applicable in every Member State (Article 99(3) GDPR). The claim for compensation in the event of acting contrary to the GDPR arises directly from the GDPR itself (Article 82(6) GDPR jo. Article 79(2) GDPR). In the absence of EU procedural rules it is settled case-law of the ECJ that it is for the Member States to designate the competent judicial authorities and to apply their national procedural law in cases of enforcement of Union law (see judgment in 16 December 1976, C-33/76, Rewe, ECLI:EU:C:1976:188, and Judgment of 13 July 2006, C-295/04 - 298/04, Manfredi, ECLI:EU:C:2006:461 point 62). A procedural rule must (*inter alia*) comply with the principle of effective judicial protection, as set out in Article 47 Charter of the fundamental rights of the EU (Charter) (see judgments of the Court of Justice of 18 March 2010, C-317/08, C-318/08, C-319/08 and C-320/08, Alassini and Others, ECLI:EU:C:2010:146). Finally, the Division infers from Article 8:88 General Administrative Law Act jo. Article 34 Dutch GDPR Implementation Act that it has been the intention of the national legislator that the same judge, which rules on, *inter alia*, decisions of administrative bodies, on a request as referred to in Articles 15 to 22 GDPR, may also be asked to rule on the reimbursement of related damages.

Judgment

The Division judges that there is therefore - in this type of cases - a choice for the litigant possible between the civil court and the administrative court. However, the administrative court must then apply the criteria from the Dutch Civil Code for compensation (BW 6:106) and follow on this matter the case law of the Supreme Court, which is the highest civil court in the Netherlands. Only the civil court is competent for damages of more than € 25,000.

The Division comes to this judgment in four different cases (the other three cases are: ECLI:NL:RVS:2020:899, ECLI:NL:RVS:2020:900 and ECLI:NL:RVS:2020:901). The Division rules that only in the first case, the man whose medical data has been sent to the disciplinary court, is entitled to compensation. His privacy has been violated in such a way that justifies compensation of € 500, taken into account the fact that this information only came to a small group of professionals with professional secrecy.