

Anonymised version

Translation

C-687/21 – 1

Case C-687/21

Request for a preliminary ruling

Date lodged:

16 November 2021

Referring court:

Amtsgericht Hagen (Germany)

Date of the decision to refer:

11 October 2021

Applicant:

BL

Defendant:

Saturn Electro-Handelsgesellschaft mbH Hagen

[...]

Amtsgericht Hagen (Local Court, Hagen)

Order

In the case between

BL, [...] 44319 Dortmund,

Applicant,

[...]

and

Saturn Electro-Handelsgesellschaft mbH Hagen, [...] Hagen,

Defendant,

[...]

The following questions are referred to the Court of Justice of the European Union for a preliminary ruling:

1. As no automatic legal effects are specified, is the compensation rule enacted in Article 82 of the General Data Protection Regulation invalid in the case of non-material damage?
2. Is it necessary, for the purposes of the right to compensation, to establish the occurrence of non-material damage, to be demonstrated by the claimant, in addition to the unauthorised disclosure of the protected data to an unauthorised third party?
3. Does the accidental disclosure of the personal data of the data subject (name, address, occupation, income, employer) to a third party in a paper document (printout), as the result of a mistake by employees of the processing undertaking, suffice in order to establish infringement of the General Data Protection Regulation?
4. Where the undertaking accidentally discloses, through its employees, data entered in an automated data processing system to an unauthorised third party in the form of a printout, does that accidental disclosure to a third party qualify as unlawful further processing (Article 2(1), Article 5(1)(f), Article 6(1) and Article 24 of the General Data Protection Regulation)?
5. Is non-material damage within the meaning of Article 82 of the General Data Protection Regulation incurred even where the third party who received the document containing the personal data did not read the data before returning the document containing the information, or does the discomfort of the person whose personal data were unlawfully disclosed suffice for the purpose of establishing non-material damage within the meaning of Article 82 of the General Data Protection Regulation, given that every unauthorised disclosure of personal data entails the risk, which cannot be eliminated, that the data might nevertheless have been passed on to any number of people or even misused?
6. Where accidental disclosure to third parties is preventable through better supervision of the undertaking's helpers and/or better data security arrangements, for example by handling collections separately from contract documentation (especially financing documentation) under separate collection notes or by sending the documentation internally to the collection counter without giving the customer the printed documents and collection note, how serious should the infringement be considered to be (Article 32(1)(b) and (2) and Article 4, point 7, of the General Data Protection Regulation)?

7. Is compensation for non-material damage to be regarded as the award of a penalty similar to a contract penalty?

Reasons:

The court has to adjudicate the following facts:

The applicant in the main proceedings visited the defendant company in order to order a household appliance. The purchase was to be financed by a third party.

For that purpose, an employee of the undertaking prepared the appropriate purchase and credit agreement, which was then entered into the defendant's automated data processing system.

Aside from the customer's surname and forename, the documents also contained the customer's address, place of residence and employer, as well as the income paid to the customer by his employer and his bank details.

The negotiation and effects of the contract were documented and the documents were printed, signed by both parties and handed to the customer.

The customer took the documents, which were bundled (stapled) together, to the collection counter to which he had been directed, where other employees of the defendant company were responsible for handing out goods.

Two helpers were involved in handing out goods. The collections manager was busy serving another customer and was not physically present at the collection counter.

Another customer (the third party) jumped the queue, which the employees did not notice, and was given both the household appliance ordered by the applicant and the associated contract documents, which the applicant had handed over to them, including the personal details listed above.

The third party left with the household appliance and the documents. The error was subsequently discovered by the manager, who managed to retrieve the household appliance and the documents within half an hour. The documents were returned to the applicant about 30 minutes after they had been handed over to the third party.

The defendant offered to compensate for the error by delivering the household appliance to the applicant's home free of charge, but the applicant rejected that offer as inadequate.

The applicant is now seeking damages from the defendant company for pain and suffering, including on the basis of the General Data Protection

Regulation. The defendant contends that the General Data Protection Regulation was not infringed and that no damage was incurred.

It further argues that any infringement of the General Data Protection Regulation presupposes a degree of severity, which is missing here. Data misuse, that is the use of the applicant's personal data by the third party, has not been alleged and there is as yet no evidence of any such misuse.

The court holds that, if Article 82 of the General Data Protection Regulation is to be effective in respect of the right to compensation for the non-material damage addressed therein, a right might exist if it is automatically triggered when the paper document containing the applicant's personal data is handed over to the unauthorised third party.

In order to resolve doubts as to whether the court's interpretation is correct, the order for reference should also be understood as seeking clarification as to whether the fact that paper documents containing the data entered in the automated data processing system were handed over to an unauthorised third party as the result of negligence of itself establishes infringement of the General Data Protection Regulation, which the defendant vehemently denies, although it bears the burden of proving its innocence.

It is also necessary to determine, through interpretation of Article 82 of the General Data Protection Regulation, the extent to which contributory negligence may preclude, in whole or in part, the right to compensation. The recitals of the General Data Protection Regulation do not provide any more detailed information on the above questions of interpretation.

[...]