

You are a judge of the administrative court in one of the member states of the European union. You are deciding in the case in which company ABC is seeking annulment of Data Protection Agency (DPA).

### ***Chronology and facts of the case***

- ABC is a company in which employs approximately 1200 people. All of them work under the contract which are in most parts standardized but differ significantly when it comes to calculation of various bonuses.
- In August 2018, Mr. X, who is an employee of the ABC, realized that the company has been miscalculating the net amount of his salary, he was due based on his work contract. However, when he approached the financial department with inquiry about this, he was rejected, with the explanation that the amount paid was correct. Mr. X initiated civil proceedings against the company and succeeded in his claim, although the court concluded in the end that he was due lesser amount than he initially thought. It appears that the problem was with different interpretations of one provision in the work agreement, which had an impact on the calculation of bonuses to the salary.
- Following Mr. X's case, several other employees also approached the company with similar requests but were rejected. This led to new cases of litigation against the company; some of them were decided in favor of the workers, some in favor of the company. This was once again because employees have different bonuses and other benefits defined in their contracts with the company.
- At the end of each fiscal year, the company gives all its employees a printout of all payments under the contract. It lists the personal details of an employee, his or her basic salary as defined in the contract, criteria for the award of bonuses and the calculation used to define their amount, and applicable taxes. The printout is not stored anywhere as a single file. It is created dynamically from a database where individual information (basic salary, criteria for bonuses) are defined, by the computer program used in the accounting department. In essence, the program takes all the variables from the work contract, performs the necessary calculations and produces printout which shows necessary information.
- While all employees receive this document (in hard copy), many do not keep it.
- In order to check whether they have been properly paid, and whether to initiate legal proceedings against the company, employees needed to compare income received with the amounts stipulated in the contract. This also includes some calculating when it comes to bonuses, since these are defined based on the basic salary and some factors which are specified in the contract. The easiest way of finding this information is from the yearly payment sheet issued by the company, but since many employees did not keep it, they needed to perform the necessary calculations by themselves and compare this with the amounts they received.
- Under national law, the person who needs some information in order to initiate legal proceedings can make use of a specific provision in the Civil Procedure Code. This provision was enacted in 2015. It is not in dispute that all employees of ABC can use this legal instrument to obtain necessary information, and some have used it successfully.
- Several employees of ABC decided to take a different route and request information under article 15 of the General Data Protection Regulation (GDPR). While the end result is the same as with using the relevant provision of the Civil Procedure Code, this option is easier and less costly for plaintiffs.
- ABC complied with all requests under the Civil Procedure Code but rejected those made on the basis of GDRP. Some employees appealed against such decision to the Data Protection

Agency, and the Agency decided in their favor, granting their request and ordering ABC to enable access to data under article 15 of the GDPR. You are now presented with an action in which annulment of Data Protection Agency's decision is sought.

***During the proceedings, you are presented with the following arguments:***

- That information within the payment sheet are personal data.
- That employees enjoy right of access to their personal data under article 15.
- That it is relatively easy for the data controller to produce fresh printout. This is not disputed by ABC.
- That right to personal data protection is a fundamental one, and therefore needs to be interpreted broadly.
- The right to access under article 15 does not apply in this case, since it can only be executed by the data subject if the legality of data processing is brought into question. This is supported by reference to recital 63 and the phrase "in order to be aware of, and verify, the lawfulness of the processing".
- Contrary to the above, that data subjects are not required to explain what the purpose of their request to access data is; consequently, the purpose is irrelevant. This is countered by the argument that the court is not precluded from taking the purpose of the request into account when it manifestly is not for data protection purposes.
- That the purpose of the request is to gather information necessary to initiate legal proceedings (pretrial discovery), and that the purpose of the GDPR was not to harmonize national procedural law (which is outside of competence of the EU).
- That in any event, right of access under article 15 of the GDPR is properly limited under relevant provision of the Civil Procedure Code
- That Civil Procedure Code should apply here as *lex specialis*
- That in any case payment sheet itself is not "personal data", but only a document which contains personal data. Therefore, there is no obligation for data controller to give a copy of the document. It might only be required to submit individual information which are found within the sheet. This in any case excludes any calculation.
- That data controller is in any event not obliged to create new printout, since under article 15 it is obliged to give a copy, and there cannot be a copy of something which the data controller does not yet have.