Copy & Waste? – Federal Labor Court decides on judicial enforcement of the right to a copy of data under Art. 15 GDPR

INTRODUCTION

The claim to information under Art. 15 GDPR has been occupying the courts since the GDPR came into effect in May of 2018. Even though the Federal Data Protection Act had previously provided for claims to information, they were more or less consigned to the shadows. Thanks to the broad public discussion before the GDPR became law, Art. 15 GDPR, however, is significantly more present in the minds of many people, which is also reflected in an increased number of legal conflicts surrounding this provision. In addition, the provision lends itself to broad interpretation, thus providing additional reasons and opportunities for disputes.

ART. 15 GDPR IN EMPLOYMENT LAW

The claim to information is an important tool for protecting personal rights and privacy but is not seldom misappropriated in an employment law context as more of a tactical tool in conflict situations. We often experience in our practice that actions filed against a dismissal or for payment of variable compensation are flanked by such claims to information. It is not seldom that there is serious doubt whether plaintiffs are really pursuing the purpose of achieving transparency in the processing of their data. Rather, at times it becomes quite clear that a certain amount of "fishing" is going on or that, given the background of the very broad understanding of this provision in some circles, and particularly of the serious fines and threats of damage claims for violations of the GDPR, it is quite simply being used as an "instrument of torture" to apply pressure in an employment law dispute. In a very recent case, the Federal Labor Court has now had the opportunity to deal with this provision.

THE CONTENT OF ART. 15 GDPR

It is natural that a number of employee data will be processed under the scope an employment relationship. The employee thus has the right under Art. 15 GDPR to demand more detailed information on the processing of personal data by the employer. The disclosure duty includes, for instance, the statement of the processing purpose, the categories of the processed data, the recipient of the data, statements on the duration of storage, the source of the data and also, for instance, advice on the existence of rights to erasure, rectification and to file a complaint.

Paragraph 3 of Art. 15 GDPR also states – quite simply – that the employer must provide the employee with **"a copy of the personal data undergoing processing"**.

THE "RIGHT TO A COPY OF DATA" IN THE CASE LAW

In the past, disputes have flared up with respect to how far the duty in the above wording exactly goes. One topic in particular has heated up minds: In the modern world of work a large number of emails and other digitally transmitted information will naturally accumulate. Generally, these messages include personal data. According to a widely held view, Art. 15 GDPR should therefore also include the duty to provide employees with a copy of the emails that have accumulated over the course of the employment relationship (as ruled by the Superior Labor Court of Stuttgart, judgment of December 20, 2018 – 17 Sa 11/18; see also our **Client Newsletter 02/2019**).

It is plain to see that the duty arising from Art. 15 (3) GDPR can only be fulfilled with extreme effort, if at all, in the event of such a broad understanding. One must consider, namely, that emails contain the data of other individuals with their own legitimate rights to protection so that emails would first have to be reviewed and redacted, where necessary.

For this reason, doubts concerning the reasonableness of this understanding had already been voiced in the past. After the decision of the Superior Court of Baden-Württemberg, other labor courts had dealt with the scope of the disclosure claim and the duty to provide a copy and attempted, in some cases to reduce this duty to a practically acceptable level (see, for instance the Labor Court of Bonn, judgment of July 16, 2020 – 3 Ca 2026/19). In the absence of a ruling by the highest court, however, this issue remained highly controversial. Unfortunately, the recent decision by the Federal Labor Court will likely not change that situation.

THE DECISION OF THE FEDERAL LABOR COURT OF APRIL 27, 2021 (FILE NO. 2 AZR 342/20)

The plaintiff in the proceedings decided by the Federal Labor Court was employed by the defendant as a business lawyer. His employment was terminated

in January of 2019. Shortly thereafter, the plaintiff asserted his claim to disclosure under Art. 15 GDPR, in response to which the defendant provided the information and his stored personal data as a ZIP file. However, in the litigation, the plaintiff maintained, among other things, that the disclosure duty had not been completely fulfilled. According to his legal opinion, the defendant was namely obliged to provide copies to him of the **entire email correspondence between himself and the defendant, as well as all of the other emails in which his name was mentioned.**

The plaintiff remained unsuccessful before both the Labor Court of Hameln and upon the appeal before the Superior Labor Court of Niedersachsen. Although the Superior Labor Court had granted him a claim to the provision of a copy of the processed personal data, it explicitly assumed that this claim did not cover the provision of copies of each and every email or to other compiled data sets (such as the personnel file). According to the Superior Labor Court, the claim to the provision of a copy under Art. 15 (3) GDPR does not go further than the duties regulated by the stated duties in Art. 15 (1) GDPR. In other words: The plaintiff can only demand information as such on the processed data, but not a copy of any documents or compilations in which they are included. In addition, the Superior Labor Court also noted that the plaintiff naturally was already familiar with the email correspondence conducted by and with him.

The second appeal by the plaintiff against this judgment was unsuccessful. As far as can be seen from the press release of the Federal Labor Court, the reason for this was on the level of the admissibility of the action. The Federal Labor Court came to the – certainly logical – conclusion that a motion for the provision of copies of unspecified emails is too vague and thus inadmissible. The consideration behind this argument also concerns the issue of the (lacking) enforceability of a judgment that would affirm such a vague motion.

PRACTICAL SIGNIFICANCE OF THE DECISION

It is unfortunate that the Federal Labor Court had already dismissed the appeal as inadmissible so that it was no longer absolutely necessary for the Court to address the matter of the scope of the „right to a data copy". It would certainly have been desirable for the Federal Labor Court to provide legal clarity on this issue, particularly with a view to proceedings before data protection agencies.

It still remains to be seen if broader insight can be derived from the detailed grounds of the judgment (which cannot be expected for several weeks or perhaps not for several months). On the other hand, the judgment already exhibits assistance for employment law practitioners in limiting the right under Art. 15 (3) GDPR and regarding possible defense strategies. It again makes clear that employees cannot by any means indiscriminately demand "all" emails in litigation. Rather, they will have to file a detailed motion, which will constitute a hurdle in and of itself.

It is interesting that the Federal Labor Court mentioned, in its press release, the possibility for suing employees to submit a so-called "action by stages" ("*Stufenklage*") as a way of overcoming this hurdle. It may well be that the conflicts surrounding the right to a data copy will move in the future into the direction of having employees first demand information on what emails even (still) exist to then proceed to the second stage with a specific motion demanding the provision of copies. How things develop will remain (unfortunately) interesting and requires ongoing monitoring. We will keep you on top of things.

Should you have questions related to disclosure claims or the "right to data copies" provided for in Art. 15 GDPR, please feel free to contact us at any time. We look forward to assisting you.

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