GDPR NON-MATERIAL DAMAGE

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CASE	DATE	SUMMARY
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European Court in European Ombudsman v Staelen,	04 Apr 2017	For compensation of non-material damages, they must be "actual and certain"; merely stating that such non-material damage was suffered is not enough, they [damages] must be sufficiently substantiated. how is that to be reconciled with Recital 146's requirement that the compensation be "full and effective"?
Amtsgericht Diez, 07-11-2018, 8 C 130/18 machine translation here	07 Nov 2018	The plaintiff sought damages for the receipt of a spam email, but the Local Court of **Diez in Germany** held that there would be no claim pursuant to Article 82 where there is merely an infringement of the GDPR without causing any damage.
OLG Frankfurt/M. U. v. 12.2.2019 – 11 U 114/17 = ZD 2019, 364	12 Fev 2019	0 EUR There is no breach of data protection if a liability insurance company passes on an expert opinion to a company commissioned by it for control purposes. Thus, no damages under Art. 82 GDPR.
Amtsgericht Bochum, 11-03-2019, 65 C 485/18 ***Tara Taubman-Bassirian https://Datarainbow.eu***	11 Mar 2019	The Local Court of Bochum in **Germany** held that a misdirected email, of itself, is unlikely to count as damage for the purposes of Article 82. The claimant was in the past represented by the defendant as a legal guardian in various areas (including property and housing matters) for less than a year. And since the claimant also lives in a rented apartment, the defendant also assisted in the communication with the landlord. A dispute arose between the claimant and his (now former) legal guardian (the defendant) because the claimant was of the opinion that the defendant had, among other things, disclosed the income and financial circumstances of the claimant to the landlord. In the course of the subsequent litigation, the defendant was asked by the claimant's new lawyer to send the appointment certificate as proof of her former legitimation to represent the claimant in the past. The new lawyer took this as an opportunity to sue the defendant for damages, as the latter had sent the said certificate by unencrypted, "normal" e-mail to the lawyer. The claimant's lawyer stated that this constitutes a breach of the security of the processing pursuant to Art. 32 GDPR. "*Since the assistance also encompassed the scope of responsibilities of housing matters, the disclosure of the assistance together with the presentation of the appointment certificate as well as the discussion of the income and financial circumstances in relation to the obligations under the rental contract to perform the legal obligations of the defendant arising from the assistance and is therefore also lawful under Art. 6 GDPR without the consent of the claimant*." In addition, the Court also considered it lawful to send the appointment certificate to the claimant's lawyer. The Court did not specify a legal basis for this. The Court then turns to a possible violation of the GPDR and damages dues to **sending an unencrypted e-mail.** The Court affirms that the sending of an unencrypted e-mail might infringe Art. 32 GDPR. The view that the sending of an unencrypted e-mail might violate Art. 32 GDPR is also the opinion of the Data Protection Authority of North Rhine-Westphalia (DPA NRW), which says the following on its website: **"*The communication by e-mail requires at least the transport encryption, as it is offered by the considerable European providers by default. ... It must be taken into account that in the case of transport encryption the e-mails are available on the e-mail servers in plain text and can basically be viewed. In the case of particularly sensitive data (e.g. account transaction data, financing data, health status data, client data from lawyers and tax consultants, employee data), transport encryption alone may not be sufficient*".** (DPA NRW, Technical Requirements for Technical and Organizational Measures for E-Mail Sending, available here in German). However, the Court did not decide on the question whether there had been a violation of Art. 32 GDPR. The claim was rejected for two other reasons: First, the Court notes that the fact that personal data and information relating to the claimant have actually become known to unauthorised third parties as a result of the choice of an unsecured transmission path is neither explained nor apparent. Second, the claimant has not submitted any evidence of the material or non-material damage he has suffered as a result of the unencrypted sending of the appointment certificate. Consequently, the Court would require the claimant to demonstrate that the damage actually occurred. But since the claimant could not even demonstrate that data had become known to unauthorised third parties, the Court concludes that, due to this lack of evidence, one can also not imply that the applicant has suffered any material or non-material damage as a result of a possible infringement.
https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:376	15 Mar 2019	The **Dutch Supreme Court** ruled that when claiming non-material damages, the claimant must substantiate their impairment (the impairment that led to the non-material damage) with "concrete information" (concrete gegevens). How can non-material damage be the subject of concrete information?
Rechtbank Overijssel; 28-05-2019; AK_18_2047	28 May 2019	Administrative District Court of Overijssel in the **Netherlands** awarded damages of € 500 to a plaintiff whose FOI request was shared with other public authorities as a best practice, without anonymizing the documents. The Court used Article 82 GDPR in conjunction with Article 6:106 of the Dutch Civil Code, and held that the **misuse of the data was sufficient to justify non-material damages**.

The Oberster Gerichtshof (the **Supreme Court of Austria**) *Schrems v Facebook Ireland* 6Ob91/19d	**23 May 2019**	Confirmed that claims for damages pursuant to Article 82 may be maintained in class actions in the **Austrian** courts (see *Schrems v Facebook Ireland* 6Ob91/19d (23 May 2019)), but the decision of the Innsbruck court puts paid to any class action arising out of this breach, as well as to a claim in which a plaintiff seeks €1,000 compensation for each of 12 cookies placed on her computer by the defendant's website without her consent. The decision of the Innsbruck court is also very similar in this respect to the approach being taken by the German courts (the Diez, Bochum, Dresden and Karlsruhe decisions). Indeed, on 7 November 2019, in a claim for an injunction to restrict unlawful processing, the Regional Court of Munich held that the mere processing of data contrary to data protection legislation is not of itself a sufficient violation to justify a remedy.
Oberlandesgericht Dresden, 4. Zivilsenat, Beschluss vom 11-06-2019, Az.: 4 U 760/19 **OLG Dresden - 4 U 760/19**	**11 Jun 2019**	According to the Higher Regional Court of Dresden (Resolution of June 11, 2019), "minor damages" do not give rise to any claim for non-material damages under Article 82 GDPR.
Labour Court Lübeck, decision of June 20, 2019 – 1 Ca 538/19, ZD 2020, 422	**20 Jun 2019**	
Landgericht Karlsruhe; 02-08-2019; 8 O 26/19	**02 Aug 2019**	The Regional Court of Karlsruhe in Germany held that a mere violation of the provisions of the GDPR would not allow for compensation pursuant to Article 82 (and that a claim for damages for a violation of the right of personality in Article 2 Grundgesetz required an identifiable loss which could be assumed in the case of "humiliation" resulting from an unlawful disclosure of data).
Lande**sgericht Feldkirch**; summary here; pdf via here; extensive discussion by Christopher Schmidt here) machine translation here via nyob's GDPRhub **==> referred the question of the threshold for such a claim for compensation to the CJEU**	**14 Aug 2019**	The Regional Court of Feldkirch had held that it was sufficient for the purposes of Article 82 that there was an unlawful processing of the plaintiff's party preferences by the Austrian Postal Service, but the Higher Regional Court of Innsbruck reversed, holding that the plaintiff must actually feel impaired or distressed in order to be able to claim compensation for non-material damages: "A data protection violation must in any case intervene in the emotional sphere of the victim, … a minimum level of personal impairment will have to be required for the existence of non-material damage". Awarded damages € 800, because the defendant (Österreichische Post AG) has processed party preferences of the plaintiff without legal basis, and this "disturbed" the plaintiff and he felt "inconvenience".
Rechtbank Amsterdam; 02-09-2019; 7560515 CV EXPL 19-4611	**02 Sep 2019**	The Administrative District Court of **Amsterdam** in the Netherlands awarded damages of € 250 to plaintiff for non-material damages pursuant to Article 82 GDPR and Article 6:106 of the Dutch Civil Code.
Appeal against Local Court **of Goslar** district court of Goslar (AG Goslar, 27. September 2019 – 28 C 7/19) https://talkingtech.cliffordchance.com/en/data-cyber/data/european-court-of-justice-set-to-rule-on-data-protection-breach-.html https://www.jdsupra.com/legalnews/compensating-non-material-damages-based-3541948/	**27 Sep 2019**	The Court refused a non-material damages claim for receiving an advertising e-mail without giving prior consent. The Court held that no harm was apparent – only a single unsolicited advertising e-mail was sent, the email clearly indicated from its appearance that it was related to advertising, and this resulted only in a temporary inconvenience to the individual. He filed a constitutional complaint. The Claimant then filed a constitutional complaint to the German Federal Constitutional Court after his appeal of hearing was dismissed by the local court Goslar.The FCC agreed with the Plaintiff, ruling that **the Magistrate Court was indeed obliged to turn to the ECJ in accordance with Article 267 para. 3 TFEU**
Landsgericht Munich, 34 O 13123/19) (machine translation here via nyob's GDPRhub	**07 Nov 2019**	Like the Austrian courts, the **German** courts also permit class actions in which compensation pursuant to Article 82 may be sought (see Oberlandesgericht Stuttgart; 27-02-2020; 2 U 257/19; also here). It may be that, as such actions become more common, the German and Austrian courts may find it difficult to maintain such a narrow approach to non-material damage.
OLG Dresden Hinweisbeschlus s v. 11.12.2019 – 4 U 1680/19 = ZD 2020, 413	**11 Dec 2019**	0 EUR The mere blocking of the user account on a social network, as well as the loss of data, does not constitute any damage within the meaning of the GDPR. The thirty-day blocking of the user account has a minor character, which does not justify the award of intangible damages.
Rechtbank Noord-Nederland; 15-01-2020; C / 18 / 189406 / HA ZA 19-6	**15 Jan 2020**	The Administrative District Court of the Northern Netherlands awarded € 250 for unlawful processing of personal data, and emphasised that "Article 82 of the GDPR provides that the person who has suffered material or non-material damage as a result of an infringement of the Regulation has the right to receive compensation from the controller or processor for the damage suffered. All damage must be compensated, and the concept of damage must – in accordance with the objectives of the GDPR – be broadly interpreted (paragraph 146 of the preamble to the GDPR), which means that the mere fact that the damage cannot be specified precisely and may be relatively small in scope cannot constitute grounds for rejecting any claim thereto" ([4.106]).
OLG Braunschweig U. v. 5.2.2020 – 1 U 9/20 = MMR 2021, 706	**05 Fev 2020**	0 EUR The blocking of the post and the functional impairment of the plaintiff's account did not constitute a violation of mandatory requirements of the GDPR. The mere blocking of the data, like a loss of data, does not in itself constitute damage.
OLG Bamberg B. v. 6.2. 2020 – 8 U 246/19	**06 Fev 2020**	0 EUR The deletion of a comment and the temporary and partial blocking of the possibilities of accessing the Internet platform does not constitute a violation of the GDPR.
Oberlandesgericht Innsbruck; 13-02-2020; pdf here via here; noted here and here; discussed here	**13 Feb 2020**	The Higher Regional Court of **Innsbruck** in Austria reversed an award of € 800 in non-material damages for unlawful processing of sensitive personal data relating to political opinion. completely dismissed the claim for non-material damages and made comments on the intangible claim for damages according to Article 82 GDPR.
OLG München U. v. 18.2. 2020 – 18 U 3465/19 = MMR 2021, 71	**18 Fev 2020**	0 EUR In the present case, there was no violation of the GDPR, so that no claim under Art. 82 para. 1 GDPR was awarded. The data subject had given prior consent pursuant to Art. 6 para. 1 sentence 1 lit. a GDPR with regard to the terms of use of the social media platform Facebook.

Labour Court Düsseldorf, decision of March 5, 2020 – 9 Ca 6557/18, BeckRS 2020, 11910.	05 Mar 2020	**Düsseldorf** Labour Court held insufficient and delayed provision of information under Article 15 GDPR • The term "*damage*" within the meaning of Article 82 GDPR is to be interpreted widely. • Data subjects may claim damages for immaterial damage caused by violations of the requirements for access requests Article 15. € 5000 damage awarded.
Magistrate Court Hannover 531 C 10952/19, BeckRS 2019, 43221, Rn. 20; Magistrate Court Diez, decision of November 7, 2018 - 8 C 130/18, BeckRS 2018, 28667, Rn. 6.	09 Mar 2020	**Hannover** Court: Violations that only constitute an "*individually perceived inconvenience*" would not entitle a plaintiff to compensation. Though this school of thought agrees that there is a materiality/de minimis threshold, there is some discrepancy on where that threshold actually lies.
Pforzheim Local Court 25 March 2020, case no. 13 C 160/19, BeckRS 2020, 27380;	25 Mar 2020	**Pforzheim** Local Court Unlawful disclosure of health data Damages claims must have a deterrent effect pursuant to Article 82 GDPR. € 4000 damage awarded.
OLG Köln U. v. 26.3.2020 – 15 U 193/19 Tara Taubman-Bassirian https://Datarainbow.eu	26 Mar 2020	0 EUR Article 82 GDPR does not require a serious violation of personal rights on the part of the person concerned or the fault of the person making the statement, nor does it follow from recital 146 GDPR that compensation for non-material damage to the person concerned must be undeniably necessary. However, Art. 82 para. 1 GDPR is not applicable here in principle, since the publication of the portraits by the Bekl. constitutes "processing for journalistic purposes" and thus the media privilege pursuant to Art. 85 para. 2 GDPR in conjunction with § 19 para. 1 BlnDSG applies. Even if Article 85(2) of the GDPR does not provide for the possibility of deviations or derogations by the Member States, the obligation to pay damages to the detriment of the media in the event of a breach of Article 6(1)(f) of the GDPR is not applicable. In the absence of validity of the obligations, there can be no violation of this provision under Article 6 GDPR.
RvS - 201902417/1/A2 - Council of State	01 Apr 2020	The Council of State in **Netherland** rejected the claim of the plaintiff asking for damage compensation for the violation of the GDPR by the local authorities considering the lack of proof of an actual damage caused by the lack of information. To be compensated, claimant must be able to prove that the damage is real and certain.
Regional Court Darmstadt-13 O 244/19, ZD 2020, 642; LG Darmstadt U. v. 26.5. 2020 – 13 O 244/19 = ZD 2020, 642 mAnm Wybitul/Brams (n. rk.; Berufung ist beim OLG Frankfurt/M. unter Az. 13 U 206/20 anhängig)	26 May 2020	Regional Court **Darmstad**: Unlawful disclosure of applicant data The loss of control over personal data may constitute immaterial damage within the meaning of Article 82 GDPR. € 1000 damage awarded.
Lübeck Labour Court 20 June 2020, case no. 1 Ca 538/19	20 Jun 2020	**Lübeck** Labor Court: Unlawful publication of an employee photo Violations of the GDPR should be sanctioned effectively. € 1000 damage awarded.
Frankfurt am Main Amtsgericht" of, case no. 385 C 155/19 DLA Piper	10 Jul 2020	Judgment of a **German** courts to the effect that when quantifying the compensation, the court must take into account the fact that the compensation for non-material damages under Art. 82 (1) GDPR should have a deterrent effect. in the "exposure" resulting from the unlawful access to data. Simply the uneasy feeling that one's personal data could be used by third parties without authorization as a result of a data breach, Case No. 385 C 155/19) were not considered sufficient for a claim under Art. 82 GDPR.
OLG Nürnberg U. v. 4.8. 2020 – 3 U 3641/19 = MMR 2020, 873 (Ls.)	04 Aug 2020	0 EUR According to its own claim, the plaintif had not suffered any damage as a result of the unauthorized handling of its personal data.
Neumünster Labour Court case no. 1 Ca 247 c/20 ArbG Neumünster U. v. 11.8.2020 – 1 Ca 247 c/20 = ZD 2021, 171	11 Aug 2020	**Neumünster** Labor Court: Delayed provision of information under Article 15 GDPR, Recital 146 GDPR requires full and effective compensation by way of damages. € 1,500 (€ 500 for each month of delay) damage awarded.
judgment of the District Court in Warsaw http://orzeczenia.warszawa.so.gov.pl/content/$N/154505000007503_XXV_C_002596_2019_Uz_2020-09-23_001	06 Aug 2020	"By providing too much of the claimant's personal data to a third party, the defendant violated the plaintiff's right to privacy and led to non-pecuniary damage (harm) on her side. Privacy is a good that relates to the facts of a person's life that he or she does not consent to being made public. The emanation of the right to privacy are goods such as the secrecy of correspondence, personal data or domestic peace. As a result of the defendant's actions, the claimant's personal data was made available to a third party, which that person was not entitled to obtain (PESEL number, claimant's phone number). As a result of this incident, the claimant lost her sense of security, began to feel anxiety related to the possibility of unauthorized use of her personal data by other persons, by performing banking activities on her behalf or making unsolicited phone calls. Damage caused in this way to the plaintiff gives rise to the defendant's obligation to repair it by paying the plaintiff a pecuniary compensation, pursuant to Art. 82 sec. 1 GDPR"
OLG Dresden U. v. 20.8. 2020 – 4 U 784/20 = ZD 2021, 93	20 Aug 2020	0 EUR The deletion of posts on a social network does not in itself constitute compensable damage. The thirty-day blocking of the user account is not sufficient, which does not justify the award of intangible damages.
LG Köln U. v. 25.8.2020 – 3 O 208/19	25 Aug 2020	Art. 15 GDPR does not regulate a claim for restitution.
Dresden Labour Court 26 August 2020, case no. 13 Ca 1046/20	26 Aug 2020	**Dresden** Labour Court: Unlawful disclosure of health data • The term "*damage*" must be interpreted in a way that fully complies with the objectives of the GDPR. • According to Recital 146 GDPR, GDPR violations must be effectively compensated for. € 1500 damage awarded.
LG Ulm U. v. 28.8.2020 – 3 O 248/19	28 Aug 2020	Art. 15 GDPR grants rights of access not only about the master data, but also other data that is stored with reference to a person. Declarations in connection with the conclusion, execution and termination of an insurance contract (e.B insurance application, declaration of assignment, letter of termination) do not constitute personal data, but declarations of intent

LG Ulm U. v. 28.8.2020 – 3 O 248/19 = ZD 2021, 215 (Nachinstan z OLG Stuttgart U. v. 17.6.2021 – 7 U 325/20)		made by the policyholder. Copies of specific declarations cannot be requested in accordance with Article 15 of the GDPR, only the data contained therein and the information about the declarations themselves.
VG Wiesbaden U. v. 31.8. 2020 – 6 K 1016/15.W Tara Taubman-Bassirian https://Datarainbow.eu	31 Aug 2020	The cl. has a right to information about his at the Bekl. personal data stored in the petition procedure pursuant to Art. 15 GDPR, since the Committee on Petitions is covered by Art. 2 para. 2 GDPR. The information represents a real act. However, the decision on the information is an administrative act. The provision of information by the Committee on Petitions is preceded by a 'decision' on the question of the provision of information, which is the focus of the 'administrative' action and which takes the form of an administrative act.
LG Frankfurt/M. U. v. 3.9. 2020 – 2-03 O 48/19 = MMR 2021, 271	03 Sep 2020	0 EUR The mere deletion of a contribution by an operator of a social network or the blocking of a user account do not constitute damage within the meaning of the GDPR.
LG Hamburg U. v. 4.9.2020 – 324 S 9/19 = ZD 2021, 99 Regional Court of Hamburg	04 Sep 2020	Regional Court of **Hamburg** held that not every infringement of privacy law justifies a damages claim. Rather, the Court said, there must be an identifiable and effective violation of personality rights, which does not necessarily exist as a result of potential disadvantages that one might suffer as a consequence of a data breach.
OVG NRW B. v. 10.9.2020 – 1 B 648/20 = ZD 2021, 449	10 Sep 2020	A claim under Art. 15 GDPR for information about personal data by way of an interim injunction anticipating the main proceedings can only be considered if serious and unreasonable disadvantages threaten.
LG Lüneburg U. v. 14.7. 2020 – 9 O 145/19 = ZD 2021, 275 mAnm Wybitul/Wuermel ing/Ganz	14 Sep 2020	1,000 EUR An unlawful negative entry at a credit agency can justify compensation for harm. There is no longer any need for a serious violation of personality. It is neither intended nor covered by its goal and genesis.
Cologne Regional Labour Court 14 September 2020, case no. 2 Sa 358/20 First instance: Cologne Labor Court, 12 March 2020, case no. 5 Ca 4806/19	14 Sep 2020	**Cologne** Regional Labour Court: Continued publication of a PDF file of the plaintiff's professional profile on the defendant's website after the employment between the parties has terminated • "*Public*" disclosure of personal data may result in immaterial damage within the meaning of Article 82 GDPR. • The amount of damage to be awarded depends, among other things, on the degree of culpability, the potential and actual consequences of the violation and on whether the competent data protection authority has already reprimanded the violation. € 300 (First instance confirmed)
LG Frankfurt/M. U. v. 18.9. 2020 – 2-27 O 100/20 = ZD 2020, 639	18 Sep 2020	0 EUR The making available of personal data of a data subject to third parties without consent falls under Article 82 (1) GDPR (so-called exposure). The cl. is burdened with presentation and evidence for the GDPR violation.
LG Köln U. v. 7.10.2020 – 28 O 71/20 = ZD 2021, 47 (n. rk.)	07 Oct 2020	0 EUR The principles developed in conjunction with § 253 BGB (German Civil Code) apply to non-material damages. The criteria of Article 83(2) of the GDPR may be used for the assessment. A general exclusion of minor cases is not compatible with this.
LG Essen U. v. 29.10.2020 – 4 O 9/20 = ZD 2021, 163 mAnm Gulden/Bente	29 Oct 2020	0 EUR An online review of an unfriendly, named service in a café does not constitute a claim for deletion against the platform operator and thus no claim for compensation for pain and suffering under Art. 82 GDPR.
Regional Court of Landshut https://www.gesetze-bayern.de/Content/Document/Y-300-Z-BECKRS-B-2020-N-33148?hl=true	06 Nov 2020	Regional Court of **Landshut** held that a violation of privacy law does not automatically result in a damages claim. Rather, said the Court, the infringement must in each case also lead to a specific (not merely insignificant or perceived) infringement of the personality rights of the data subject. Accordingly, the data subject must have suffered a noticeable disadvantage, and the impairment must be objectively comprehensible (with some consideration given to personal interests). The courts in both of these cases align with the prevailing view in Germany of damages claims brought under the GDPR – namely, that an aggrieved party will need to demonstrate a clear, specific and objective harm that has resulted from a violation of data protection law to be awarded a claim for damages.
LG Meiningen U. v. 23.12. 2020 – (122) 3 O 363/20	23 Dec 2020	EUR 10,000 The inadmissible disclosure of health data of the plaintif by an accident insurer justifies compensation for pain and suffering in the amount of EUR 10,000 from § 241 (2) BGB. It does not matter whether there is also a claim pursuant to Article 82(1) of the GDPR, which contains an express provision on non-material damages. The serious violation of the general right of personality already justifies a contractual claim for compensation for pain.
LG Frankfurt M . U. v. 18.1. 2021 – 2- 30 O 147/20 = ZD 2021, 653 (n. rk.)	18 Jan 2021	0 EUR No claim under Article 82 (1) GDPR, as the breach of duty was not conclusively presented. A mere data leak does not indicate that this is due to a breach of duty. There is no reversal of the burden of proof with regard to the breach of duty to the detriment of Bekl. The cl. must demonstrate and prove that the violation is due to a breach of duty by the Bekl. and there is damage.
LG Karlsruhe U. v. 9.2.2021 – 4 O 67/20 = ZD 2022, 55	09 Feb 2021	0 EUR A serious violation of personal rights is not necessary to assert non-material damage. However, not every breach of the GDPR leads to an obligation to compensate; there must be a nameable and in this respect actual violation of personality. Art. 82 GDPR does not justify a claim for damages in the event of every individually perceived inconvenience or minor violations without serious impairment of a person's self-image or reputation. Dissemination of the name, date of birth, gender, e-mail address and telephone number represent only minor damages.
LG Bonn U. v. 1.7.2021 – 15 O 372/20 = ZD 2021, 586	01 Jul 2021	0 EUR Art. 82 GDPR grants a claim for damages only to those who have suffered damage due to a violation of this Regulation. In accordance with Article 82 (2) of the GDPR, the persons responsible are liable for the damage caused by processing not complying with this Regulation. Therefore, only an infringement by the processing itself can be considered, which must be contrary to the regulation. A mere violation of the information rights of the data subject under Art. 12-15 GDPR therefore does not mean that data processing as a result of

		which the right to information has arisen is itself contrary to the regulation. The late fulfilment of information claims pursuant to Art. 12 para. 3 sentence 1 GDPR does not trigger a claim for damages under Art. 15 GDPR. The mere fact that the kl. had to "wait" for the data information cannot justify any compensable damage even according to the damage scale of the GDPR. Even in the case of non-material damage, a noticeable impairment has occurred.
LG Bonn U. v. 1.7.2021 – 15 O 356/20 = ZD 2021, 652	**01 Jul 2021**	0 EUR Due to the data information provided only after nine months, the Plaintif is not entitled to compensation for pain and suffering under Art. 82 GDPR. The standard grants a claim for damages only to those who have suffered damage due to a violation of this Regulation. In accordance with Article 82 (2) of the GDPR, the persons responsible are liable – in this respect in this respect – for the damage caused by processing that does not comply with this Regulation. Therefore, only an infringement by the processing itself can be considered, which must be contrary to the regulation in order to trigger a claim for damages. In the event of violations that have not been caused by processing contrary to the GDPR, liability under Article 82 (1) GDPR is out of the question. A mere violation of the information rights of the data subject under Articles 12-15 of the GDPR does not mean that data processing as a result of which the right to information arose is itself contrary to the regulation. Thus, the late fulfilment of information claims under Article 15 GDPR pursuant to Article 12 (3) sentence 1 GDPR does not trigger a claim for damages pursuant to Article 82 GDPR. In addition, no damage was presented here. The mere fact that the plaintif had to "wait" for the data information cannot justify any compensable damage even according to the damage scale of the GDPR. An appreciable impairment must also have occurred in the event of non-material damage, irrespective of a materiality threshold; otherwise, a "damage" is already conceptually excluded.
LG Bonn U. v. 1.7.2021 – 15 O 355/20	**01 Jul 2021**	0 EUR There is no claim for compensation for pain and suffering pursuant to Art. 82 GDPR due to data information provided after eight months. A mere violation of the information rights of the data subject under Articles 12-15 of the GDPR does not mean that data processing as a result of which the right to information arose is itself contrary to the regulation.
LG Düsseldorf U. v. 13.7. 2021 – 7 O 63/20	**13 Jul 2021**	0 EUR According to Art. 82 GDPR, any person who has suffered material or non-material damage due to a violation of the GDPR is entitled to compensation against the controller or against the processor. In principle, the person who asserts a claim under Article 82 of the GDPR bears the full burden of presenting the facts giving rise to the claim. Such a GDPR violation lies neither in a supposedly delayed provision of information nor in the "data leak" at the Bekl. or.dem processor, as there was no violation of the GDPR in the present case.
LG Köln U. v. 3.8.2021 – 5 O 84/21 = ZD 2022, 52 Tara Taubman-Bassirian https://Datarainbow.eu	**03 Aug 2021**	0 EUR The kl. demanded 8,000 EUR compensation for pain and suffering for the non-anonymous forwarding of a court order to a larger circle of interested parties. The transmission to employees of other municipalities without blurring the identity of the plaintiff violates the GDPR. However, the impairments described by the plaintif are not necessarily due to the forwarding. Damage must also have occurred as a result of the infringement, whereby a co-causation is sufficient. The plaintif is not entitled to any damages here, since no non-material impairments of the cl. are apparent. In addition to the deterrent effect, there should not be an endless accumulation of claims – after all, according to Art. 83 GDPR, there is also the possibility of imposing fines to a considerable extent in the event of violations. For non-material damages, the principles developed within the meaning of § 253 BGB apply, the determination is incumbent on the court according to § 287 ZPO. The criteria of Article 83(2) of the GDPR may be used for the assessment, e.g. the nature, gravity and duration of the infringement, taking into account the nature, scope or purpose of the processing in question, the categories of personal data concerned. It must also be taken into account that the intended deterrent effect is only achieved by compensation for pain and suffering sensitive to the person liable for the claim, in particular. if commercialization is missing. A reversal of the burden of proof or a facilitation of evidence do not apply in favour of the plaintiff. The burden of proof also for this condition lies with the claimant, this corresponds to the general tortious conditions. A reversal of the burden of proof can be expressly inferred from the standard only with regard to the aspect of fault.
LG München I U. v. 2.9. 2021 – 23 O 10931/20 = ZD 2022, 52	**02 Sep 2021**	0 EUR The cl. has neither infringed the Bekl. against the GDPR comprehensibly presented nor a compensable damage. According to Art. 82 GDPR, damage caused by a violation of the Regulation can also be compensated. The recitals also mention non-pecuniary damage caused by discrimination, identity theft or fraud, damage to reputation, loss of confidentiality of personal data subject to professional secrecy or social disadvantages. However, the plaintiff has not put forward a comparable serious intervention. The argument that the damage consists in the loss of control of his data is not sufficient to establish a measurable non-material damage.
LG Essen U. v. 23.9.2021 – 6 O 190/21 = ZD 2022, 50	**23 Sep 2021**	0 EUR The Cl. claimed at least EUR 30,000 in non-material damages in connection with the alleged loss of a USB stick containing personal data of the Kl. and his wife. In the missing communication of the Bekl. the data protection authority and the data subject pursuant to Art. 33, 34 para. 2 GDPR are in breach of the GDPR. However, the Kl. has not sufficiently substantiated that considerable damage has occurred. For non-material damages pursuant to Art. 82 GDPR, the principles developed within the meaning of § 253 BGB apply. The criteria of Article 83(2) of the GDPR may be used for the assessment can be used. A deterrent effect can only be achieved by sensitive pain and suffering, esp. if commercialization is missing. A general exclusion of minor cases is not compatible with this. The obligation to reimburse non-material damage is therefore not limited to serious damage. However, the violation of data protection law as such alone does not constitute a claim for damages. The infringing act

		must have led to a concrete, not only insignificant or perceived violation of personal rights. A serious violation of the right of personality is not required. However, a minor violation is not enough. The person concerned must have suffered a noticeable disadvantage and it must be about an objectively comprehensible impairment of personality-related concerns with a certain weight.
LG Düsseldorf U. v. 28.10. 2021 – 16 O 128/20 = ZD 2022, 48	**28 Oct 2021**	0 EUR The Bekl. was not obliged to pay damages in accordance with Article 82 (1) and (2) of the GDPR due to a breach of the obligation to provide information under Article 15 of the GDPR. It is true that Article 82(1) of the GDPR is broadly worded, which merely constitutes an *'infringement... against this Regulation'*; Taking into account Article 82(2) and recital 146 of the GDPR, only damage resulting from processing is covered. Pursuant to Article 82 (2) of the GDPR, each controller involved in processing is liable for the damage caused by processing that does not comply with this Regulation. This is in line with recital 146 GDPR. The hesitant reaction to a request for information is not a processing of personal data within the meaning of the GDPR. Art. 82 GDPR is sometimes interpreted much further; the court does not agree with this. In addition, the kl. had not presented any concrete damage. In any event, in addition to the mere infringement, it would be necessary for non-material damage to have occurred *'as a result of an infringement'*. The concept of damage must be interpreted autonomously, the materiality threshold cannot be taken into account. However, under Article 82(1) of the GDPR, in addition to the mere violation of the Regulation, causal non-material damage based on that is required.
LG Mainz U. v. 12.11.2021 – 3 0 12/20 ***Tara Taubman-Bassirian https://Datarainbow.eu***	**12 Nov 2021**	EUR 5,000 The unlawful initial registration of an entry with SCH UFA Holding AG justifies an immaterial claim for damages pursuant to Article 82 (1) GDPR. The first registration of the Bekl. to SCHUFA constituted a "violation of this regulation" within the meaning of Article 82 (1) GDPR. According to recital 146, contrary to the wording of Article 82(1) of the GDPR, an infringement of the delegated and implementing acts adopted and of more precise provisions of the Member States is also sufficient, so that it is irrelevant whether, in the present case, the inadmissibility of the initial notification results from the GDPR itself or from the more specific provisions of national law. "Responsibility" iSd. Art. 82 para. 3 GDPR means fault within the meaning of German legal terminology, not responsibility under data protection law. Intent or negligence is sufficient. Fault is presumed according to the clear wording of Article 82(3) of the GDPR. (Reversal of the burden of proof). A prerequisite for a claim for damages for non-material damage pursuant to Article 82 (1) GDPR is a nameable and actual violation of personality. On the other hand, the condition of a serious violation of personality required in previous German case law for compensation for harm and suffering is not compatible with Article 82(2) of the GDPR. Rather, the non-material damage must be compensated comprehensively. With this restriction, the principles developed in conjunction with § 253 BGB (German Civil Code) apply to non-material damages pursuant to Article 82 (2) of the GDPR; the investigation is incumbent on the court according to § 287 ZPO. When calculating the "full and effective compensation for the damage suffered" (recital 146 GDPR), the satisfaction and deterrent function of the claim under Article 82 GDPR must also be taken into account. The massive impairment of the social reputation in the sense of assessment of its creditworthiness by third parties represents such damage.
OLG Köln U. v. 26.11.2020 – 15 U 39/20 = ZD 2021, 323	**26 Nov 2020**	0 EUR There is no obligation to pay damages under Article 82 (2) of the GDPR in the event of a violation of Article 6 of the GDPR, since Article 6 of the GDPR is not applicable due to Article 85 (2) of the GDPR due to the national requirements in the press and media laws.
District Court of Northern Netherlands (Rb. Noord-Nederland) Rb. Noord-Nederland - 8187989	**12 Jan 2021**	The District Court of Northern Netherlands ordered the municipality of Oldambt to pay a claimant €500 in non-material damages for repeatedly violating the claimant's privacy, by publishing their social security number, e-mail address, and telephone number without their consent. € 500 damage awarded.
OLG Dresden U. v. 12.1. 2021 – 4 U 1600/20 = MMR 2021, 575	**12 Jan 2021**	0 EUR A serious personal injury is required for a claim for monetary compensation. The deletion of a post and the thirty-day transfer to the "read-only mode" only affect the social sphere of the person concerned, they are not communicated publicly and do not have a "pillory effect".
Beschluss vom - 1 BvR 2853/19 https://iapp.org/news/a/federal-constitutional-court-cjeu-must-clarify-whether-gdpr-provides-materiality-threshold/ https://www.whitecase.com/publications/alert/compensating-non-material-damages-based-article-82-gdpr-there-de-minimis ➔ **Referred to ECJ**	**14 Jan 2021**	**German** Federal Constitutional Court (Bundesverfassungsgericht) ruled that the determination of the materiality threshold for damages under Article 82(1) was a matter for the Court of Justice and not for the German courts. Recital 146, sentence 3 of the GDPR, which states *"…the concept of damage should be broadly interpreted in the light of the case-law of the Court of Justice in a manner which fully reflects the objectives of this Regulation.*" The Federal Constitutional Court maintained the **materiality threshold has neither been subject to an interpretation by the CJEU (acte éclairé) nor was the application of EU law so obvious to leave no room for reasonable doubt (acte clair).** Further, the Federal Constitutional Court noted the GDPR does not clarify the extent of compensation for immaterial damage following data privacy violations. The Federal Constitutional Court also held German authors had not yet adopted a uniform approach on the scope of GDPR damage claims. For these reasons, the Federal Constitutional Court determined the concrete scope of Article 82 of the GDPR remains unclear.
KG B. v. 2.2.2021 – 9 W 1117/20 = ZD 2201, 378	**02 Feb 2021**	0 EUR No non-material damages were awarded, as the infringement acts took place before the applicability of the GDPR.
OLG München U. v. 8.12. 2020 – 18 U 5493/19 Pre	**06 Feb 2021**	0 EUR The mere blocking of the user profile does not constitute any damage.
BGH B. v. 16.2.2021 – VI ZA 6/20	**16 Feb 2021**	EUR 0 A claim under Article 82(1) of the GDPR was denied. Due to the opening clause of Art. 85 GDPR, data processing for journalistic purposes is exempted from the provisions

BGH B. v. 16.2.2021 – VI ZA 6/20 = ZD 2021, 340 (Ls.)		concerning the lawfulness of data processing in Articles 6 and 7 GDPR by national regulations.
OLG Düsseldorf B. v. 16.2. 2021 – 16 U 269/20 = ZD 2022, 47	**16 Feb 2021**	0 EUR According to the protective purpose of the standard, the claim under Art. 82 GDPR only covers those situations in which the type of information obtained is questioned and the accusation of non-transparent data processing is in, i.e. the right to informational self-determination is at stake. If, on the other hand, the impairment is linked to the result of the communication process, namely the publication and dissemination of the personal data, only the scope of protection of the general right of personality is affected, and an application of Article 82 GDPR is excluded. According to the protective purpose of the provision, the claim under Art. 82 GDPR only covers those situations in which the type of information is obtained.
OLG Karlsruhe U. v. 23.2. 2021 – 14 U 3/19 = ZD 2021, 376	**23 Feb 2021**	0 EUR In the present case, there was no violation of the GDPR, so that no claim under Article 82(1) of the GDPR was awarded.
German Higher Regional Court OLG Bremen - 1 W 18/21	**25 Feb 2021**	The **Baden-Wuerttemberg** Labour Court of Appeals has confirmed that the threshold of the burden of proof for damages is quite high. While the decision also provides interesting annotations on the requirements of standard contractual clauses within the meaning of the GDPR, the court did not need to address the scope of a possible entitlement to immaterial damages. An employee alleged entitlement to immaterial damages in connection with the transfer of his personal data to the employer's parent company in the US. Both the labour court of the first instance and the labour court of appeals dismissed the motion.
OLG Stuttgart - 9 U 34/21	**31 Mar 2021**	The Higher Regional Court of **Stuttgart** held that a data subject is only eligible for compensation if damages suffered are a direct result of a controller's non-compliance with the GDPR. In addition, no reversal of the burden of proof can be derived from the principle of accountability (Article 5(2) with regards to Article 82(1) GDPR.
Rb. Midden-Nederland (Netherlands) https://gdprhub.eu/index.php?title=Rb._Midden-Nederland_-_AWB_-_20_3811&mtc=today	**4 May 2021**	The Court of First Instance of the Central **Netherlands** found that the personal data of a claimant's child was illegally shared with the Dutch tax office, in violation of the principles of proportionality and data minimisation. However, since the claimant failed to show any concrete damages, there was no right to compensation.
Rb. Overijssel - ak 20 1535 District Court of Overijssel	**31 May 2021**	The District Court of Overijssel ordered the **Dutch** municipality of Amelo to erase a 'youth assistance' file. This is the second instance in a short period of time that a lower court has ruled that the Dutch Youth Act does not authorize municipalities to keep files that are no longer needed. The court awarded the child and his mother € 125 each in damages.
Cour d'Appel Versailles – France	**30 Jun 2021**	A ruling by the Court of Appeal of **Versailles**: The company was victim of a ransomware led by one of its ex financial directors who admired liability. The Court of appeal accepted the principal of liability for the legal person but refused to grant compensation for distress.
Rb. Rotterdam - ROT 20/3286	**12 Jul 2021**	The District Court of **Rotterdam** ruled that the fact that medical data had been processed by the defendant for ten years despite numerous erasure requests, that the mere fact that the plaintiff's right to respect for private and family life had been violated satisfied the threshold for immaterial damages under the Dutch Civil Code. Awarded a plaintiff € 2500 in immaterial damages
Rb. Overijssel - AK 20 2097 District Court of Overijssel	**12 Aug 2021**	The District Court of **Overijssel** held that a mere breach of the GDPR does not automatically lead to compensable damage. The Court rejected the claim for damage as the applicant had not sufficiently demonstrated the adverse effects of the disclosure of his personal data to third parties, and as there was no indication the data was misused.
Austrian Supreme Court ➔ **Refer questions to the ECJ**	**Aug 2021**	The **Austrian** Supreme Court paved the way for a more coherent interpretation of the GDPR regarding damages by initiating the preliminary reference procedure. In its reference for a preliminary ruling, the Austrian Supreme Court asked several questions on the interpretation of Art. 82 GDPR. The forthcoming clarification of fundamental questions on damages in the legal system of the GDPR will have a considerable influence on corresponding and future court proceedings in all European member states. **The Austrian Supreme Court referred the following three questions to the CJEU:** *Is it necessary that the plaintiff has suffered damages or is the breach of provisions of the GDPR itself sufficient to award damages under Art. 82 GDPR? *Are there any other requirements for the assessment of damages in addition to the principles of effectiveness and equivalence under European law? *Does an award of immaterial damage require that the infringement has consequences of at least some weight which goes beyond the distress caused by the infringement?
High Court Feltwood v Total Fitness Health Clubs Ltd	**Jun 2021**	**UK High Court** to rule: A fitness chain has been hit with a privacy lawsuit by a former member after his personal data was stolen and compromised during a cyberattack, which he said had caused him anxiety and distress. a former member of the gym chain Total Fitness Health Clubs Ltd., has told the High Court that the club owes him damages after it suffered a data breach and his personal information was stolen, although it is not known who carried out the attack.
OLG Schleswig- Holstein U. v. 2.7.2021 – 17 U 15/21 = ZD 2021, 584 (Revision zugelassen)	**02 Jul 2021**	87,03 EUR The Kl. has against the Bekl. a claim for reimbursement of the pre-litigation lawyer's fees asserted by him in the amount of EUR 887.03 from Art. 82 para. 1 GDPR, § 249 BGB.
OLG Bremen B. v. 16.7.2021 – 1 W 18/21 = ZD 2021, 652	**16 Jul 2021**	0 EUR A claim for damages under Article 82 of the GDPR presupposes the occurrence of material or non-material damage. In order to assert a claim for compensation for non-material damage, it is not sufficient to assert a claim for non-material damage without an allegation of non-material damage resulting therefrom.
OLG Brandenburg B. v. 11.8. 2021	**11 Aug 2021**	0 EUR. A claim for compensation under Article 82(1) of the GDPR presupposes the existence of a damage, which the claimant must demonstrate in the dispute. Such damage has not been conclusively demonstrated here. Article 82(3) of the GDPR in conjunction with

OLG Brandenburg B. v. 11.8. 2021 – 1 U 69/20 = ZD 2021, 693 Tara Taubman-Bassirian https://Datarainbow.eu		recital 146 p. 2 of the GDPR does not reverse the burden of proof for the existence of damage. According to the clear and unambiguous wording of Article 82(3) of the GDPR and recital 146 of the GDPR, the controller's obligation to provide evidence relates solely to his responsibility for the circumstances that caused the damage, but not – also – to the damage itself. A referral to the ECJ was not required due to the clear wording of Article 82(1) and (3) of the GDPR.
OLG Dresden U. v. 31.8. 2021 – 4 U 324/21 = ZD 2022, 40	**31 Aug 2021**	0 EUR Any person who has suffered material or non-material damage due to a violation of the GDPR is entitled to compensation against the person responsible. Each controller involved in processing is liable for the damage caused by processing that does not comply with this Regulation. However, such an infringement does not exist here. The plaintif had implicitly given its consent to the data deletion associated with the replacement of the hard disk. Whether the purchase contract existing between the parties and the associated contractual obligations have been effectively amended in accordance with §§ 305 et seq. of the German Civil Code (BGB) may be left open to the question in accordance with Article 82 of the GDPR. Also, whether the mere loss of data constitutes non-material damage within the meaning of Article 82 GDPR or whether this requires a significant impairment. There is no demonstration by the plaintiff on the effects of the alleged data loss. The claimed non-material damage (10,000 EUR) obviously only serves to build up a threat potential.
Rolfe and others v Veale Wasbrough Vizards [2021] EWHC (QB)	**07 Sep 2021**	**UK Queens Bench Division** - An email that was sent by a law firm to the wrong recipient and a subsequent claim for compensation by the correct recipients. The email in question was a demand for payment of school fees. Due to one letter difference in the email address, it went to the wrong recipient. A claim was made in the High court for damages under Article 82 of the GDPR and section 169 Data Protection Act 2013 citing misuse of confidential information, breach of confidence, and negligence. The court accepted that in principle damages can be recovered for breaches of data protection regulations and misuse of private information and referred to the principle of loss of control constituting damage. However, it was noted in a summary judgment that 'We have here a case of minimally significant information, nothing especially personal such as bank details or medical matters, a very rapid set of steps to ask the incorrect recipient to delete it (which she confirmed) and no evidence of further transmission or any consequent misuse (and it would be hard to imagine what significant misuse could result, given the minimally private nature of the data)
OLG München U. v. 27.10. 2021 – 20 U 7051/20	**27 Oct 2021**	EUR No violation of the GDPR has been found. The naming of owners in whose apartment a salmonella infestation was detected, compared to other owners of a
ZD 2022, 39 (bestätigt LG Landshut U. v. 6.11.2020 – 51 O 513/20 = ZD 2021, 161)	**06 Nov 2021**	Condominium owners' association is admitted according to Art. 6 para. 1 sentence 1 lit.c, lit. f GDPR.
District Court Munich of 9 December 2021 (case no 31 O 16606/20)	**09 Dec 2021**	**Munich** court the Court awarded the plaintiff a compensation of **EUR 2,500** for non-material damages, although there was no proof that the stolen data of the plaintiff was actually used for fraudulent purposes, such as fraudulent credit loan applications. The plaintiff argued that files of the prosecutor's office indicate that there were three successful unauthorized accesses to personal data where third party attackers copied and used customer data to apply for credit loans on basis of stolen identities. He alleged that the stolen data was offered for sale on the dark web and argued to be permanently exposed to the risk that his data could be used for identity theft and other fraudulent activities. In addition, the Court held that the defendant is obliged to compensate the plaintiff for all future material damages suffered by the plaintiff as a result of the unauthorized third-party data access.
Gelderland district court – NederWoon	**07 Apr 2021**	**Netherland** Lawyers raised the claims for damages on behalf of an anonymous house hunter. The house hunter had been notified by NederWoon that their data may have been compromised following a hack on its computer systems in May 2019. The hacker was subsequently convicted of a computer hacking offence following a criminal investigation. the court dismissed the claims. It found that the claims of damage and distress allegedly experienced by the house hunter following the hacking incident had not been substantiated. The court said: "The mere assertion that there has been talk of 'distress' is insufficient if no substantiation is given showing that [plaintiff] has suffered from this in concrete terms or how this 'distress' has manifested itself with him. It has not become evident that [plaintiff], for instance, immediately after receiving the letter from NederWoon asked questions or showed his concern in any other way. Other expressions of distress have also not been made or shown."
Telecom Italia - Preliminary ruling referred by Italy ➔ **Refer questions to the ECJ**	**16 Aug 2021**	Questions referred: 1. Are Articles 24 and 32 of GDPR to be interpreted as meaning that unauthorised disclosure of, or access to, personal data within the meaning of point 12 of Article 4 of GDPR by persons who are not employees of the controller's administration and are not subject to its control is sufficient for the presumption that the technical and organisational measures implemented are not appropriate? 2. If the first question is answered in the negative, what should be the subject matter and scope of the judicial review of legality in the examination as to whether the technical and organizational measures implemented by the controller are appropriate pursuant to Article 32 of GDPR? 3. If the first question is answered in the negative, is the principle of accountability under Article 5(2) and Article 24, read in conjunction with recital 74 thereof, to be interpreted as meaning that, in legal proceedings under Article 82(1), the controller bears the burden of proving that the technical and organisational measures implemented are appropriate pursuant

		to Article 32 of that regulation? Can the obtaining of an expert's report be regarded as a necessary and sufficient means of proof to establish whether the technical and organisational measures implemented by the controller were appropriate in a case such as the present one, where the unauthorised access to, and disclosure of, personal data are the result of a '*hacking attack*'? 4. Is Article 82(3) to be interpreted as meaning that unauthorised disclosure of, or access to, personal data within the meaning of point 12 of Article 4 by means of, as in the present case, a '*hacking attack'* by persons who are not employees of the controller's administration and are not subject to its control constitutes an event for which the controller is not in any way responsible and which entitles it to exemption from liability? 5. Is Article 82(1) and (2), read in conjunction with recitals 85 and 146 thereof, to be interpreted as meaning that, in a case such as the present one, involving a personal data breach consisting in unauthorized access to, and dissemination of, personal data by means of a '*hacking attack'*, the worries, fears and anxieties suffered by the data subject with regard to a possible misuse of personal data in the future fall per se within the concept of non-material damage, which is to be interpreted broadly, and entitle him or her to compensation for damage where such misuse has not been established and/or the data subject has not suffered any further harm?
German Federal Labour Court (Bundesarbeitsgericht, BAG) (German) of August 26, 2021, 8 AZR 253/20 (A) ➔ **Refer questions to the ECJ** decision	**26 Aug 2021**	**German** Federal Labour Court submits some practical-relevant questions to the ECJ which do not only specifically concern the area of employee data protection. One question of the BAG is, for example, whether the lawfulness of the processing of health data also depends on at least one of the conditions set out in Art. 6 (1) GDPR being met? This concerns the quite controversial question of whether, in addition to the fulfilment of an exception pursuant to Art. 9(2) GDPR, a legal basis pursuant to Art. 6(1) must also be fulfilled.
Referral C-741/21 (juris, 1 Dec 2021) Landgericht Saarbrücken (Germany) ➔ **Refer questions to the ECJ**	**01 Dec 2021**	In the light of recital 85 and the third sentence of recital 146 of the GDPR, is the concept of 'non-material damage' in Article 82(1) of the GDPR to be understood as covering any impairment of the protected legal position, irrespective of the other effects and materiality of that impairment? 2. Is liability for compensation under Article 82(3) of the GDPR excluded by the fact that the infringement is attributed to human error in the individual case on the part of a person acting under the authority of the processor or controller within the meaning of Article 29 of the GDPR? 3. Is it permissible or necessary to base the assessment of compensation for non-material damage on the criteria for determining fines set out in Article 83 of the GDPR, in particular in Article 83(2) and 83(5) of the GDPR? 4. Must the compensation be determined for each individual infringement, or are several infringements – or at least several infringements of the same nature – penalised by means of an overall amount of compensation, which is not determined by adding up individual amounts but is based on an evaluative overall assessment?
https://eugd.org/2500-euro-schadenersatz-eugd-klage-wegen-datenleck-bei-scalable-capital/ https://eugd.org/2500-euros-damages-eugd-scalable-capital-data-leak/	**21 Dec 2021**	**Munich Civil court** awards damages on the basis of Article 82 GDPR non-material damage as a result of an infringement of the Regulation, The court said DS shall have the right to obtain compensation from the controller or processor for the damage suffered. 2500 euros were awarded for compensation for non-pecuniary damage to a victim of a data breach resulting in the theft of personal data relating to his identity and finances. In addition, the controller is condemned for any subsequent material damage resulting from the theft of data. 33,000 people were affected by the violation.
Munich (20.01.2022, 3 O 17493/20)	**20 Jan 2022**	A court in **Munich** (20.01.2022, 3 O 17493/20) awards € 100,- on the basis of a non-material damages according to Art 82 GDPR against a website operator, b/c the IP address (= personal data) is transmitted to a third country without adequate level of protection. The controller could not establish a sufficient basis according to chapter V (Art 44 et seq data GDPR). The website operator used Google Fonts on the website, which the plaintiff accessed several times. The court affirms the loss of control as non-material damage and states that the question of the de minimis limit or materiality threshold in the specific case can be left open. Excerpt from the judgment: "The transmission of the IP address thus did not occur only once. The associated infringement of the general right of personality is, in view of the plaintiff's loss of control over a personal data to Google, a company that is known to collect data on its users, and the individual discomfort felt by the plaintiff as a result, so significant that a claim for damages is justified. " The court also refers to the preventive function of Art 82 GDPR. The claim for damages is also intended to encourage conduct in conformity with the law and to provide for security measures. The court also states that the amount of € 100,- is reasonable and was also not contested by the defendant party in a substantiated manner.

RvS - 202100213/1/A3	26 Fev 2022	The **Council of State in Nederland** confirmed their earlier decision that a data subject must plausibly demonstrate that a violation of the GDPR resulted in damages, before they are entitled to compensation pursuant to Article 82 GDPR.
EWHC (UK) - Stadler v Currys Group Ltd	31.01.2022	The **UK High Court** rejected a data subject's claim for damages under Article 82 UK-GDPR on the basis that they did not suffer any damage, harm or injury, as the defendant reimbursed them after an unauthorised purchase was made on their user account.
RVS - 202004314/1/A3	02 Fev 2022	The **Supreme Administrative Court of the Netherlands** ruled that Dutch **administrative courts have jurisdiction** to decide on **compensation** claims under Article 82 GDPR, if the plaintiffs individually claim a compensation of **less than €25,000**
LG Heidelberg - 4 S 1/21	16 Mar 2022	The **Regional Court of Heidelber**g awarded a data subject damages in the amount of €25 pursuant to Article 82 GDPR after receiving unsolicited advertising emails.
LG Köln - 28 O 328/21	18 May 2022	The Regional Court of Cologne ordered an online stockbroker to pay non-material damages of €1200 because it did not delete or change the login details of a previous business partner to its database for several years, which were later used in a data breach by a third party.
LAG Schleswig-Holstein - 6 Ta 49/22	01 Jun 2022	**The Regional Labour Court of Schleswig-Holstein** (LAG Schleswig-Holstein) ordered the controller to pay €2,000 in non-material damages for publishing a promotional video featuring the data subject without their informed, written consent.
LG Ravensburg, Beschluss vom 30.06.2022 - 1 S 27/22 ➔ **Refer questions to the ECJ**	30 Jun 2022	**Regional Court Ravensburg,** The court wishes to know whether the concept of non-material damage in Article 82(1) #GDPR is to be interpreted in a way that a non-material #damage requires a noticeable disadvantage and an objectively comprehensible impairment of personal interests or whether the mere short-term loss of the data subject's control over his/her data due to the publication of personal data on the internet for a period of a few days, which remained without any noticeable or adverse consequences for the data subject, is sufficient to qualify as a non-material damage.
		By Tara Taubman-Bassirian
Skeleton v Morrisson's Supermarket Supreme Court	01 Apr 2020	**Vicarious liability**
https://www.bailii.org/ew/cases/EWHC/QB/2021/2809.html	07 Sep 2021	In a summary judgment application, I must refuse summary judgment if the claim has a 'more than fanciful' prospect of success, that is to say a realistic prospect, and that there is no other good reason for a trial. I need not recite all the principles: this is not a 'mini trial' I should take into account material reasonably likely to be before the court at trial and need not take current evidence at face value if it is contradictory or inherently implausible. See Swain v Hillman [2001] 2 All ER 91, ED & F Man Liquid Products v Patel [2003] EWCA Civ 472, Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550, Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 63, ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725.
Lloyd v Google LLC [2019] EWCA Civ 1599	02 Oct 2019	**UK Court of Appeal** held that plaintiffs can recover damages for loss of control of their data without proving pecuniary loss or distress. This was a decision on the provision of UK law implementing Article 23(1) of the Data Protection Directive (Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995);
Lloyd v Google - SUPREME COURT Appeal in the matter of Lloyd (Respondent) v Google LLC (Appellant) has been heard 28/29 Apr 2021 by the Supreme Court and is currently awaiting judgment. *Tara Taubman-Bassirian https://Datarainbow.eu*	10 Nov 2021	**UK Supreme Court** - Whether the respondent should have been refused permission to serve his representative claim against the appellant out of the jurisdiction (i) because members of the plaintif had not suffered 'damage' within the meaning of section 13 of the Data Protection Act 1998 ('DPA'); and/or (ii) the respondent was not entitled to bring a representative claim because other members of the plaintif did not have the 'same interest' in the claim and were not identifiable; and/or (iii) because the court should exercise its discretion to direct that the respondent should not act as a representative. **Supreme Court rejects £3bn data protection claim against Google in landmark decision for data privacy litigants and representative actions** The three issues for determination by the Supreme Court were: 1 -Are damages recoverable for loss of control of data under section 13 of the Data Protection Act 1998 (DPA98), even if there is no pecuniary loss or distress? 2- Do the four million individuals share the "same interest", which is a requirement for a representative action to proceed in England and Wales? 3- If the "same interest" test is satisfied, should the Court exercise its discretion and disallow the representative action proceeding in any event?
By Tara Taubman-Bassirian https://Datarainbow.eu		By Tara Taubman-Bassirian https://Datarainbow.eu

David Flint	**May 2021**	Does non-material damage under GDPR need to be material or is that immaterial?
Emmanuela Truli"The General Data Protection Regulation and Civil Liability"? (Springer, 2018) 303 (SSRN)	**21 Apr 2019**	In Mor Bakhoum, Beatriz Conde Gallego, Mark-Oliver Mackenrodt & Gintare Surblyte-Namaviciene (eds) *Personal Data in Competition, Consumer Protection and Intellectual Property Law. Towards a Holistic Approach*
Sanna Toropainen (SSRN).	**8 Sep 2019**	"The Expanding Right to Damages in the Case Law of CJEU"
Eoin O'Dell http://www.tara.tcd.ie/bitstream/handle/2262/92307/(2017)40(1)DULJ(ns)97.pdf;sequence=1	**10 Mar 2020**	Compensation for non-material damage pursuant to Article 82 GDPR –
Freshfields Bruckhaus Deringer LLP https://www.lexology.com/library/detail.aspx?g=91317fe2-2118-4241-a8bb-6d6ba9d2c0b4	**18 May 2021**	Non-material damages and the GDPR - what's next in the Netherlands?
White Case https://www.whitecase.com/publications/alert/compensating-non-material-damages-based-article-82-gdpr-there-de-minimis	**2 Mar 2021**	Germany's Federal Constitutional Court holds that the question should be referred to the European Court of Justice
Hogan Lovells https://www.engage.hoganlovells.com/knowledgeservices/news/germany-new-case-law-on-immaterial-damages-for-gdpr-infringements	**26 Oct 2020**	Germany: New case-law on immaterial damages for GDPR infringements
Freshfields Bruckhaus Deringer LLP https://digital.freshfields.com/post/102grta/cjeu-to-shape-requirements-for-gdpr-damage-claims	**1 Mar 2021**	CJEU to shape requirements for GDPR damage claims
ECJ Overview of pending cases by Joost Gerritsen		
		By Tara Taubman-Bassirian https://Datarainbow.eu