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Case C-27/23, Social Insurance

FV – v – Caisse pour l'avenir des enfants, reference lodged by the Cour de cassation du Grand-Duché de Luxembourg (Luxembourg) on 23 January 2023

Do the principle of equal treatment guaranteed by Article 45 TFEU and by Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union and the provisions of Article 67 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and Article 60 of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation No 883/2004 on the coordination of social security systems preclude provisions enacted by a Member State under which frontier workers may not receive a family allowance associated with their employment in that Member State for children placed in care with them under a court order, whereas any child placed in care under a court order and living in that Member State is entitled to receive that allowance which is paid to the natural or legal person who has custody of the child and with whom the child is officially resident and actually lives on a continuous basis? Does the answer to that question depend on whether the frontier worker provides for the upkeep of that child?

Case C-36/23, Social Insurance

L – v – Familienkasse Sachsen der Bundesagentur für Arbeit, reference lodged by the Finanzgericht Bremen (Germany) on 25 January 2023

1. Does Article 68 of Regulation (EC) No 883/2004 allow German child benefit to be partly recovered retrospectively on the ground of a priority entitlement in another Member State, even though no family benefit has been or is being assessed or paid for the child in the other Member State, with the result that the amount remaining to the beneficiary under German law effectively falls below the German child benefit?
2. In the event that the first question is answered in the affirmative: Does the answer to the question as to the grounds on which benefits are payable by more than one Member State within the meaning of Article 68 of Regulation (EC) No 883/2004, or the bases on which the entitlements to be coordinated arise, depend on the conditions of entitlement under the national rules, or on the circumstances on account of which the persons concerned are subject to the legislation of the relevant Member States in accordance with Articles 11 to 16 of Regulation (EC) No 883/2004?
3. In the event that the decisive criterion is the circumstances on account of which the persons concerned are subject to the legislation of the relevant Member States in accordance with Articles 11 to 16 of Regulation (EC) No 883/2004: Is Article 68 in conjunction with Article 1(a) and (b) and Article 11(3)(a) of Regulation (EC) No 883/2004 to be interpreted as meaning that an activity as an employed person or an activity as a self-employed person in another Member State, or an equivalent situation treated as such an activity for the purposes of social insurance legislation, is to be assumed to be present where the social insurance fund in the other Member State certifies that the person concerned is insured 'as a farmer' and the competent family benefits institution in that State confirms the existence of an activity as an employed person, even though the person concerned claims that that insurance is dependent only on ownership of the farm, which is registered as agriculturally productive land but is not actually in use?

Case C-41/23, Paid Leave, Fixed-term Work

AV, BT, CV and DW – v – Ministero della Giustizia, reference lodged by the Consiglio di Stato (Italy) on 26 January 2023

1. Should Article 7 of Directive 2003/88 and Clause 4 of the framework agreement on fixed-term work be interpreted as precluding national legislation which does not provide, in respect of *giudici onorari di Tribunale* (lay district court judges) and *vice procuratori onorari della Repubblica* (lay deputy public prosecutors), any entitlement to remuneration during the non-working holiday period, or to compulsory social security and insurance protection against workplace accidents and illnesses?
2. Should Clause 5 of the framework agreement on fixed-term work be interpreted as precluding national legislation under which the fixed-term employment relationship of *giudici onorari* (lay judges) – which can be classified as a service relationship and not as an employment relationship with a public authority, and which is based on an initial appointment and a single subsequent reappointment – may be extended several times by means of laws at State level, in the absence of effective and dissuasive penalties and without the possibility of transforming those relationships into employment contracts of indefinite duration with a public authority, in a fac-

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tual situation which could have produced compensatory favourable legal effects for the individuals concerned, as their appointments have been extended in an essentially automatic manner for a further period of time?

Case C-65/23, Privacy, Collective Agreements

MK – v – K GmbH, reference lodged by the Bundesarbeitsgericht (Germany) on 8 February 2023

1. Is a national legal provision that has been adopted pursuant to Article 88(1) of Regulation (EU) 2016/679 – such as Paragraph 26(4) of the Bundesdatenschutzgesetz (German Federal Law on data protection, 'the BDSG') – and which provides that the processing of personal data, including special categories of personal data, of employees for the purposes of the employment relationship is permissible on the basis of collective agreements subject to compliance with Article 88(2) of Regulation 2016/679, to be interpreted as meaning that the other requirements of Regulation 2016/679 – such as Article 5, Article 6(1) and Article 9(1) and (2) of Regulation 2016/679 – must always also be complied with?
2. If the answer to Question 1 is in the affirmative: May a national legal provision adopted pursuant to Article 88(1) of Regulation 2016/679 – such as Paragraph 26(4) of the BDSG – be interpreted as meaning that the parties to a collective agreement (in this case, the parties to a works agreement) are entitled to a margin of discretion in assessing the necessity of data processing within the meaning of Article 5, Article 6(1) and Article 9(1) and (2) of Regulation 2016/679 that is subject to only limited judicial review?
3. If the answer to Question 2 is in the affirmative: In such a case, to what is the judicial review to be limited?
4. Is Article 82(1) of Regulation 2016/679 to be interpreted as meaning that a person is entitled to compensation for non-material damage when his or her personal data have been processed contrary to the requirements of Regulation 2016/679, or does the right to compensation for non-material damage additionally require that the data subject demonstrate non-material damage – of some weight – suffered by him or her?
5. Does Article 82(1) of Regulation 2016/679 have a specific or general preventive character, and must that be taken into account in the assessment of the amount of non-material damage to be compensated at the expense of the controller or processor on the basis of Article 82(1) of Regulation 2016/679?
6. Is the degree of fault on the part of the controller or processor a decisive factor in the assessment of the amount of non-material damage to be compensated on the basis of Article 82(1) of Regulation 2016/679? In particular, can non-existent or minor fault on the part of the controller or processor be taken into account in their favour?

Case C-116/23, Social Insurance

XXXX – v – Sozialministeriumservice (SMS), Landesstelle Steiermark, reference lodged by the Bundesverwaltungsgericht (Austria) on 27 February 2023

1. Is the care leave allowance a sickness benefit within the meaning of Article 3 of Regulation (EC) No 883/2004 or, if not, another benefit under Article 3 of Regulation (EC) No 883/2004?
2. If it is deemed to be a sickness benefit, would the care leave allowance then be a cash benefit within the meaning of Article 21 of Regulation (EC) No 883/2004?
3. Is the care leave allowance a benefit for the caregiver or the person in need of care?
4. Consequently, does a situation in which an applicant for the care leave allowance, who is an Italian citizen, and has been permanently resident in Austria in the province of Upper Austria since 28 June 2013, and has also been continuously working in Austria in the same province with the same employer since 1 July 2013 (for which reason there is no indication that the applicant is a cross-border commuter), entered into an agreement with his employer to take care leave in order to care for his father, an Italian citizen who resided in Italy (Sassuolo), throughout the relevant period from 1 May 2022 to 13 June 2022 and applied to the defendant authority for a care leave allowance, fall within the scope of Regulation (EC) No 883/2004?
5. Does Article 7 of Regulation (EC) No 883/2004 or the prohibition of discrimination enshrined in various pieces of European legislation (e.g. Article 18 TFEU, Article 4 of Regulation (EC) No 883/2004, etc.) preclude a national provision that makes the payment of a care leave allowance conditional upon the person in need of care receiving an Austrian care allowance of level 3 or higher?
6. Does the EU law principle of effectiveness or the EU law principle of nondiscrimination enshrined in various pieces of European legislation (e.g. Article 18 TFEU, Article 4 of Regulation (EC) No 883/2004, etc.) preclude, in a situation such as the present case, the application of national legislation or established national case-law that does not provide any scope to reclassify a 'care leave allowance

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