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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application' as a 'family hospice leave application', when clearly a 'care leave allowance application' form was used rather than the 'family hospice leave application' form, and an agreement was clearly entered into with the employer that referred to 'nursing care for a close relative' instead of 'end-of-life care', although the underlying facts would – given that the father, who was in need of care, has subsequently passed away – in principle also satisfy the requirements for a care leave allowance under the header of 'family hospice leave' if only a different agreement had been entered into with the employer and a different application had been lodged with the authority?

7. Does Article 4 of Regulation (EC) No 883/2004 or another provision of European Union law (for example Article 7 of the Charter of Fundamental Rights) preclude a national provision (Paragraph 21c(1) of the Bundespflegegeldgesetz (Austrian Federal Care Allowance Act, 'the BPGG')) which makes the payment of care leave allowance conditional upon the person in need of care receiving an Austrian care allowance of level 3 or higher, whereas another national provision (Paragraph 21c(3) BPGG), when applied to the same facts, does not make the payment of the allowance conditional upon a similar requirement?

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Case C-125/23, Insolvency

Association UNEDIC délégation AGS de Marseille – v – V, W, X, Y, Z, Liquidator of company K, reference lodged by the Cour d'appel d'Aix-En-Provence (France) on 1 March 2023

1. Can Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer be interpreted as allowing the guarantee institution to be precluded from taking over the guarantee of severance pay on termination of employment relationships where an employee declares the termination of his or her contract of employment after insolvency proceedings have been initiated?
2. Is such an interpretation consistent with the wording and the purpose of that directive, and does it enable the results specified therein to be achieved?
3. Does such an interpretation, based on the person who terminated the contract of employment during the period of insolvency, entail a difference in treatment between employees?
4. If such a difference in treatment exists, is it objectively justified?

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