Case C-329/23, Social Insurance

Sozialversicherungsanstalt der Selbständigen – v – Dr. W M, Bundesminister für Soziales, Gesundheit, Pflege und Konsumentenschutz, reference lodged by the Verwaltungsgerichtshof (Austria) on 25 May 2023

1. Are the rules of EU law on the determination of the applicable legislation in the area of social security according to Regulation (EC) No 883/2004 in conjunction with Regulation (EC) No 987/2009 to be applied to a situation in which an EU citizen is simultaneously self-employed in an EU State, an EEA EFTA State (Liechtenstein) and Switzerland.

If the answer to the first question is in the affirmative:

2. Must the application of Regulation (EC) No 883/2004 in conjunction with Regulation (EC) No 987/2009 in such a case be such that the applicability of the social security legislation must be assessed separately in the relationship between the EU Member State and the EEA-EFTA State, on the one hand, and the relationship between the EU Member State and Switzerland, on the other hand, and must, accordingly, a separate certificate regarding the applicable legislation be issued in each case?
3. Is there a change in the 'relevant situation' within the meaning of Article 87(8) of Regulation, (EC) No 883/2004 where a self-employment activity is commenced in another State to which the said regulation is applicable, even if a change in the applicable legislation would not result either under Regulation (EC) No 883/2004 or under Regulation (EEC) No 1408/71 and the activity is so subordinate in extent that only about 3% of total income is thereby obtained?
4. In that regard, does it make any difference whether, within the meaning of the second question, coordination in bilateral relations must take place separately, that is to say, on the one hand, between the States hitherto concerned and, on the other hand, between one of the States hitherto concerned and the 'other' State?

Case C-329/23, Age Discrimination

HB – v – Federal Republic of Germany, reference lodged by the Verwaltungsgericht Karlsruhe (Germany) on 6 June 2023

1. Does it constitute direct discrimination on grounds of age within the meaning of Article 2(2)(a) of Directive 2000/78/EC, when, under Paragraph 48(2) of the German Law on Judges (Deutsches Richtergesetz, 'the DRiG'), federal judges cannot postpone the start of their retirement, even though federal civil servants and, for example, judges in the service of Land Baden-Württemberg are allowed to do so?
2. In the context of the first subparagraph of Article 6(1) of Directive 2000/78/EC, do elements derived from the general context of the measure at issue also include aspects that are not mentioned at all in the legislative material or in the course of the entire parliamentary legislative process, but are presented only during the judicial proceedings?
3. How are the terms 'objectively' and 'reasonably' in the first subparagraph of Article 6(1) of Directive 2000/78/EC to be interpreted and what is their point of reference? Does the first subparagraph of Article 6(1) of the Directive require a twofold examination of reasonableness?
4. Is the first subparagraph of Article 6(1) of Directive 2000/78/EC to be interpreted as precluding, from the point of view of coherence, national legislation which precludes federal judges from postponing their retirement whereas federal public servants and, for example, judges in the service of Land Baden-Württemberg are allowed to do so?

Case C-367/23, Working Time, Fundamental Rights

EA – v – Artemis security SAS, reference lodged by the Cour de cassation (France) on 9 June 2023

1. Does Article 9(1)(a) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time fulfil the conditions

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for it to have direct effect and be relied on by a worker in a dispute concerning that worker?

2. Must Article 9(1)(a) of Directive 2003/88/EC be interpreted as precluding domestic legislation or practices under which, in the event of a failure to comply with the provisions adopted to implement the measures necessary for the free assessment of a worker's health, the worker's right to compensation is subject to proof of the damage which would have resulted from that breach?

Case C-519/23, Free Movement

European Commission – v – Italian Republic, action brought on 10 August 2023

Form of order sought

The Commission claims that the Court should:

– declare that the Italian Republic has failed to fulfil the obligations imposed by Article 45 TFEU, not having reconstructed the former assistants' careers in order to guarantee the economic treatment due to them and the corresponding payment of arrears
– order the Italian Republic to pay the costs.

Pleas in law and main arguments

– The Commission maintains that the Italian Republic has not correctly applied Article 45 TFEU relating to the career reconstruction of university staff, hired previously by many Italian State universities with the qualification of 'assistant'.
– The Commission recalls that the Court has already had the opportunity to rule on the former assistants' situation, at the time hired by six Italian State universities. In the judgment in case C-212/99, the Court stated that the principle of equal treatment, of which Article 45 TFEU is an expression, not only prohibits overt discrimination based on nationality, but also any covert form of discrimination that, in fact, leads to the same result, and that the legal framework then in force in Italy allowed six Italian universities to put in place discriminatory administrative and contractual practices failing to recognise career reconstruction for former assistants that ensured the same rights as national workers (including increases in salary, seniority and payment of social security contributions from the original recruitment date) .
– In the judgment in case C-119/04, the Court examined the evolution of the Italian legal framework leading to decreto-legge 14 gennaio 2004, n. 2 – Disposizioni urgenti relative al trattamento economico dei collaboratori linguistici presso talune università ed in materia di titoli equipollenti (Decree-Law of 14 January 2004, No 2 – Urgent provisions relating to the economic treatment of linguistic associates in certain universities and concerning equivalent qualifications). The Court concluded that that legal framework, not incorrect, allowed the universities concerned to reconstruct the career of the former assistants .
– Despite the abovementioned Decree-Law and notwithstanding the annual appropriations of more than EUR 8 million since 2017 to be allocated to the universities that employ or have employed former assistants (funds that were initially subject to the conclusion of supplementary contracts, but at present, are released from that requirement), many former assistants still have not obtained appropriate career reconstruction. Therefore, according to the Commission, a situation of discrimination prohibited by Article 45 TFEU persists for these former assistants.

Case C-531/23, Working Time, Gender Discrimination

HJ – v – US, MU, reference lodged by the Tribunal Superior de Justicia del País Vasco (Spain) on 5 July 2023

Must Articles 3, 5, 6, 16, 17, 17(4)(b), 19 and 22 of Directive 2003/88 on the organisation of working time, Article 31(2) of the Charter of Fundamental Rights of the European Union, read in the light of the EU case-law (judgment of the Court of Justice of 14 May 2019, C-55/18), Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, Article 3(2) of the EC Treaty, Articles 1 and 4 of Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, Articles 1, 4 and 5 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, and Articles 2 and 3 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, also read in the light of the EU case-law (judgment of the Court of Justice of 2[4] February 202[2], C-389/20), be interpreted as pre-