

**Case 1:**

**Facts:**

BETA is a company that was recently put into insolvency administration. BETA, through its new management (the insolvency administrators) wishes to retrieve from the Portuguese tax authorities the following data about the company: had there been any attempts at enforcing taxes by the State against BETA; what (if any) payment had the tax authorities hitherto received from BETA; when did the tax authorities first learn about BETA's financial troubles?

BETA's stated purpose in requesting this information was to assess whether to bring an insolvency avoidance civil claim *against* the tax authority (i.e., to recover taxes collected immediately before or during the insolvency).

Normally, the BETA General Data Protection Regulation (GDPR) applies only to personal data of natural persons. But BETA invokes a (fictitious) piece of Portuguese legislation, which mandates that the provisions of the GDPR apply to legal persons *mutatis mutandis*.

That same legislation contains an exception, however, which allows the authorities to refuse to share the information requested under certain circumstances (which apply here). Invoking this exception the authorities refuse to share the information requested.

BETA challenges the refusal before a Portuguese Court, arguing that it breaches EU law, including the Charter (right to a fair trial, data protection, right to receive information).

***Does the Charter apply?***

Article 8 CFR

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

**Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)**

*Recitals 2, 4 and 73*

(2) The principles of, and rules on the protection of natural persons with regard to the processing of their personal data should, whatever their nationality or residence, respect their fundamental rights and freedoms, in particular their right to the protection of personal data. ...

(4) The processing of personal data should be designed to serve mankind. The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality. This Regulation respects all fundamental rights and observes the freedoms and principles recognised in the Charter [of Fundamental Rights of the European Union; “the Charter”] as enshrined in the Treaties, in particular the respect for private and family life, home and communications, the protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, freedom to conduct a business, the right to an effective remedy and to a fair trial, and cultural, religious and linguistic diversity.

(73) Restrictions concerning specific principles and the rights of information, access to and rectification or erasure of personal data, the right to data portability, the right to object, decisions based on profiling, as well as the communication of a personal data breach to a data subject and certain related obligations of the controllers may be imposed by Union or Member State law, as far as necessary and proportionate in a democratic society to safeguard public security, including the protection of human life especially in response to natural or manmade disasters, the prevention, investigation and prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security, or of breaches of ethics for regulated professions, other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, the keeping of public registers kept for reasons of general public interest, further processing of archived personal data to provide specific information related to the political behaviour under former totalitarian state regimes or the protection of the data subject or the rights and freedoms of others, including social protection, public health and humanitarian purposes. Those restrictions should be in accordance with the requirements set out in the Charter and in the European Convention for the Protection of Human Rights and Fundamental Freedoms.’

*Article 1 (‘Subject-matter and objectives’)*

1. This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.
2. This Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.



*Article 15 ('Right of access by the data subject')*

1. The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information ...

*Article 23 ('Restrictions')*

1. Union or Member State law to which the data controller or processor is subject may restrict by way of a legislative measure the scope of the obligations and rights provided for in Articles 12 to 22 and Article 34, as well as Article 5 in so far as its provisions correspond to the rights and obligations provided for in Articles 12 to 22, when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard:

- (e) other important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation matters, public health and social security;
- (j) the enforcement of civil law claims.'



**Case 2:**

**Facts:**

B is a Moroccan national. She was employed as a member of the domestic staff of the embassy of Xenos, a non-EU member state, in Berlin. Having worked at the embassy for a number of years, B was dismissed. She brought claims against the embassy claiming rights for:

- unlawful dismissal (according to the German Act on Dismissals);
- failure to pay the national minimum wage laid down in the Minimum Wage Act;
- breach of the German Law on Working Time;
- racial discrimination and harassment contrary to the General Act on Equal Treatment.

The embassy of Xenos claims state immunity in reliance on the (fictitious) German State Immunity Act. German courts have long interpreted the Act to give a blanket immunity to foreign states from German courts' jurisdiction in respect of proceedings concerning employment of the members of an Embassy.

B, however, believes that this immunity unduly infringes on her right to a fair trial found in Article 47 of the EU Charter of Fundamental Rights.

***Can B invoke the Charter in this case?***

**Article 47 CFR:**

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

**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 [2003] OJ L299/9**

SCOPE AND DEFINITIONS

Article 1

Purpose and scope

1. This Directive lays down minimum safety and health requirements for the organisation of working time.

2. This Directive applies to:

- (a) minimum periods of daily rest, weekly rest and annual leave, to breaks and maximum weekly working time; and
- (b) certain aspects of night work, shift work and patterns of work.

3. This Directive shall apply to all sectors of activity, both public and private, within the meaning of Article 2 of Directive 89/391/EEC, without prejudice to Articles 14, 17, 18 and 19 of this Directive.

[...]

**Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22**

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment.

Article 2

Concept of discrimination

1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.

**Case 3:**

**Facts:**

M is employed by O as a laboratory assistance under an employment contract of indefinite duration.

The relevant legislation in the Member State (Finland), which transposes Directive 2003/88/EC (the Working Time Directive) into domestic law guarantees a worker 24 working days (=4 weeks) of annual leave per year.

The law further states that “if a worker, on commencement of his or her annual leave, is incapable of working owing to maternity, sickness or accident, the leave shall, upon application by the worker, be carried over to a later date”. The same applies where an employee has to undergo medical treatment during that same period.

In addition to the statutory entitlement, M has rights under a collective agreement. According to that collective agreement – which applies to her employment contract – she is entitled to 42 working days of annual leave (=7 weeks based on a 6 working day week).

M was granted 6 days (one week) of annual leave from Monday, 7 to Sunday 13 September. At that point in the year, she had already taken 3 weeks and 4 working days of annual leave.

In August she informed her employer that she had to undergo surgery on 2 September and would subsequently be on sick leave until 23 September.

She therefore requested that her leave should be granted at a later stage.

Her employer granted her two additional days (which she was still entitled to under the legislation), but refused to do so with regard to the additional days (which she would have been entitled to under the collective agreement). The employer’s argument was that the collective agreement did not contain a carry over-provision like the legislation and that the legislation did not cover the collective agreement.

M now wants to invoke Article 31 (2) of the Charter.

***Does the Charter apply in this case?***

**Article 31 (2) CFR:**

Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.



## Directive 2003/88

Article 1 of Directive 2003/88, entitled 'Purpose and scope', provides:

‘1. This Directive lays down minimum safety and health requirements for the organisation of working time.

2. This Directive applies to:

(a) minimum periods of ... annual leave [...]

6 Article 7 of that directive provides:

‘1. Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice.

2. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.’

7 Article 15 of that directive, entitled 'More favourable provisions', states:

‘This Directive shall not affect Member States’ right to apply or introduce laws, regulations or administrative provisions more favourable to the protection of the safety and health of workers or to facilitate or permit the application of collective agreements or agreements concluded between the two sides of industry which are more favourable to the protection of the safety and health of workers.’

