Questions referred

1. Are Articles 24 and 32 of Regulation (EU) 2016/679 ([1]) to be interpreted as meaning that unauthorised disclosure of, or access to, personal data within the meaning of point 12 of Article 4 of Regulation (EU) 2016/679 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 organisational measures implemented by the controller are appropriate pursuant to Article 32 of Regulation (EU) 2016/679?

3. If the first question is answered in the negative, is the principle of accountability under Article 5(2) and Article 24 of Regulation (EU) 2016/679, read in conjunction with recital 74 thereof, to be interpreted as meaning that, in legal proceedings under Article 82(1) of Regulation (EU) 2016/679, 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) of Regulation (EU) 2016/679 to be interpreted as meaning that unauthorised disclosure of, or access to, personal data within the meaning of point 12 of Article 4 of Regulation (EU) 2016/679 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) of Regulation (EU) 2016/679, 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 unauthorised 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?

([1]) 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) (OJ 2016 L 119, p. 1).

Appeal brought on 24 June 2021 by Enrico Falqui against the judgment of the General Court (Eighth Chamber, extended composition) of 5 May 2021 in Case T-695/19, Enrico Falqui v European Parliament

(Case C-391/21 P)

(2021/C 329/17)

Language of the case: Italian

Parties

Appellant: Enrico Falqui (represented by: F. Sorrentino and A. Sandulli, avvocati)

Other party to the proceedings: European Parliament

Form of order sought

The appellant claims that the Court should:

— set aside judgment No 1000680 of 5 May 2021 of the General Court of the European Union and, consequently, the letter of 8 July 2019 (and, if necessary, the draft decision and the opinion of the legal service on which the decision is based), order reimbursement of the sums unduly withheld from his pension and order the Parliament to pay the costs of both sets of proceedings.

Grounds of appeal and main arguments

In support of his appeal, the appellant relies on five grounds:

First ground of appeal: Infringement of the decision of the Bureau of the European Parliament of 19 May and 9 July 2008 concerning '*implementing measures for the Statute for Members of the European Parliament*'.

The appellant alleges that the General Court infringed Article 75 of the abovementioned decision. He claims that that article does not provide, as the Court states, that the 'identical pension rule' under Annex III to the PEAM rules would continue to apply with future effect to pensions already granted or accrued at the date of entry into force of the Statute and therefore that any downward amendment of the national pensions would have to be reflected in the pensions awarded by the Parliament, but rather, on the contrary, that pensions already awarded on the basis of that rule are inviolable in terms of their existence and value.

Second ground of appeal: Infringement of the principle of the protection of legitimate expectations and of the principle of proportionality.

The appellant claims that the General Court erred in holding that the principles of legitimate expectations and proportionality had not been infringed. As regards legitimate expectations, that principle was infringed by the interpretation given by the Parliament and the Court of the identical pension rule, which has already been contested in the context of the first ground of appeal, while, as regards the principle of proportionality, the Court incorrectly attached importance to the objective pursued by the Italian Chamber of Deputies by means of the adoption of Decision No 14/18 (decrease in pension expenditure borne from its budget), finding it to be legitimate, without taking into account that, in the present case, that purpose is irrelevant, since there is no connection between it and the sacrifice imposed on the appellant.

Third ground of appeal: Infringement of the principle that the EU institutions may not, by automatic reference, implement an unlawful national rule.

The appellant claims that the General Court erred in finding that the national rule was automatically applicable, regardless of the fact that it is unlawful under national law and without the EU institutions being entitled to examine that point. Rather, where an EU institution applies national rules by reference, the general principle regarding the relationship between legal orders applies, a principle under which the referring legal order may refer only to rules which are lawful in the legal order to which reference is being made, in their original legal context: if they are invalid they cannot be applied. Otherwise the appellant's position would be left unprotected.

Fourth ground of appeal: Failure, in error, to take into consideration the internal rules arising from Judgment No 2/20 of the Jurisdiction Council of the Italian Chamber of Deputies, which came into force subsequently.

The appellant claims that the General Court did not take into consideration the fact that, as a result of Judgment No 2/20 of the Jurisdiction Council of the Italian Chamber of Deputies, currently, the national system — which the European Parliament seeks to apply — consists of two phases: the first consists in the recalculation of the pension in accordance with the general criteria set out in Decision 14/18, and the second consists in the application by the Offices of the Chamber of percentage increases of the pension at the request of the interested party on the basis of his or her economic situation and state of health. Such a system does not appear to be transferrable to the European level.

Fifth ground of appeal, relating to the requests held to be inadmissible at first instance, and the costs of proceedings.

The appellant maintains his request for the annulment, as far as is necessary, of the draft decision and of the opinion of the legal service on the basis of which the Parliament acted, as well as his request to be paid the sums meanwhile unduly withheld from his pension, and for the Parliament to be ordered to pay the costs of proceedings at first and second instance.