9. Article 29 of Law 1220/1981, which provides seamen with a certain protection in the event that they are abandoned abroad, does not constitute 'protection equivalent to that resulting from [the] Directive', because the protection afforded by that provision is available only where seamen are abandoned abroad and not, as required under Directive 80/987, as a result of the insolvency of the employer (§ 72-79).

Ruling (judgment)

1. Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer must be interpreted as meaning that, subject to the possible application of Article 1(2) of the directive, seamen living in a Member State who were engaged in that State by a company with its registered office in a non-member country but its actual head office in that Member State to work as employees on board a cruise ship owned by the company and flying the flag of the non-member country under an employment contract designating the law of the non-member country as the law applicable must, after the company has been declared insolvent by a court of the Member State concerned in accordance with the law of that State, be eligible for the protection conferred by the directive as regards their outstanding wage claims against the company.
2. Article 1(2) of Directive 80/987 must be interpreted as meaning that, as regards employees in a situation such as that of the defendants in the main proceedings, protection such as that provided in Article 29 of Law 1220/1981 supplementing and amending the legislation relating to the Piraeus port authority in the event that seamen are abandoned abroad does not constitute 'protection equivalent to that resulting from [the] Directive' within the meaning of that provision.

ECJ 3 March 2016, case C-12/14. Free Movement – Social Insurance

European Commission –v– Republic of Malta

Summary

Some retired Maltese citizens receive both a Maltese retirement pension and a UK supplementary civil-service pension. The Maltese government deducts the amounts received under the UK pension scheme from the old-age pension. In the opinion of the European Commission, the Maltese government does not comply with the rules on ''overlapping benefits of the same kind'' as stated in Regulation 883/2004 and the Commission brings action against Malta. The ECJ dismisses the action.

Facts

Regulation 883/2004 (which in 2009 replaced Regulation 1408/71) (both regulations jointly: the "Regulation") contains rules on "overlapping benefits of the same kind", that is to say, benefits "calculated on the basis of periods of insurance and/or residence completed by the same person". The competent institution of a Member State may take such benefits into account subject to certain rules and limitations. The rules on overlapping benefits only apply to benefits within the meaning of the Regulation, such as State pensions. They do not apply to supplementary pensions. The Regulation provides that each Member State shall inform the European Commission, by means of a formal "declaration" which benefits under its own law it considers to fall within the scope of the Regulation. The UK has not made such a declaration in respect of three types of old-age pension. These are the pensions payable under the National Health Pension Scheme, the Principal Civil Service Pension Scheme and the Armed Forces Pension Scheme 1975 (together: the "UK pension schemes"). The UK considers these pensions to be supplementary pensions and therefore excluded from the Regulation's scope. Pursuant to Article 56 of the Maltese Social Security Act, Malta deducts the amounts received under the UK pension schemes from Maltese State pensions. This impacts many retired Maltese citizens who, as they had worked for the British services in Malta prior to 31 March 1979 – the date on which the last British forces left the island – receive both a Maltese retirement pension and a 'supplementary' civil-service pension from the United Kingdom, which, under a provision against overlapping contained in Maltese legislation, is deducted from the Maltese old-age pension.

The action

In 2010, prompted by petitions by Maltese citizens, the European Commission sent the Maltese government a formal notice that it considered said Article 56 to be incompatible with the Regulation. In the Commission's opinion, the amounts paid under the UK pension schemes are benefits covered by the Regulation. The Maltese government contested the Commission's opinion, arguing that the amounts paid under the UK pension schemes are not old-age benefits within the meaning of the Regulation. The Commission brought an

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action against Malta. The governments of Austria and the UK intervened in support of Malta.

ECJ's findings

1. The Regulation imposes on Member States a duty to declare the laws and schemes relating to social security benefits which fall within the scope of the Regulation and with which the Member States are required to comply, while respecting the principle of sincere cooperation laid down in Article 4(3) TEU. It follows that every Member State, for the purposes of the declarations covered by the Regulation, must carry out a proper assessment of its own social security regimes and, if necessary, following that assessment, declare them as falling within the scope of the Regulation. It also follows from this principle that the other Member States are entitled to expect that the Member State concerned has fulfilled those obligations. Where a Member State has refrained from declaring a national law under the Regulation, the other Member States can, generally, infer from it that that law does not fall within the material scope of those regulations (§36–38).
2. This finding does not, however, mean that a Member State is denied any chance of responding when it is aware of information that raises doubts regarding the declarations made by another Member State. In the first place, if the declaration raises questions and if the Member States cannot reach agreement, in particular regarding the classification of laws or schemes within the scope of the Regulation, they may turn to the Administrative Commission. In the second place, if that commission does not succeed in reconciling the points of view of the Member States on the question of the legislation applicable in the case in point, it is, where appropriate, for the Member State doubting the correctness of a declaration by another Member State to tell the Commission or, as a last resort, bring proceedings under Article 259 TFEU in order for the Court to examine, in the context of those proceedings, the question of the applicable legislation (§40–41).
3. The finding that a Member State must take into account the declaration made by another Member State is not contrary to the case-law of the Court, according to which the fact that a Member State has included a national law or a national regulation in its declaration must be accepted as proof that the benefits granted on the basis of that law are social security benefits within the meaning of those regulations, whereas the fact that a national law or a national regulation has not been the object of such a declaration is not, of itself, proof that that law or that regulation does not come within the scope of those regulations (§42).
4. It does not follow that it is the duty of the Member States, other than that which introduced that law or regulation but did not declare it, to determine on their own initiative whether that law or regulation must be regarded as falling within the material scope of the regulations concerned (§44).
5. It follows from the foregoing that the Commission was wrong to take as a basis for the present action for failure to fulfil obligations the existence of a general duty for the Member States to ascertain whether the laws of the other Member States, notwithstanding the fact that they were not the object of a declaration, fall within the material scope of those regulations (§45).

Ruling (judgment)

The ECJ dismisses the action.

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