Dit artikel uit European Employment Law Cases is gepubliceerd door Boom juridisch en is bestemd voor anonieme bezoeker

ECJ 13 July 2017, case C-89/16 (Szoja), Social security

Radosław Szoja – v – Sociálna poisťovňa and WEBUNG, s.r.o., Slovakian case

Summary

Marginal activities should be disregarded for the purposes of determining which national social security legislation applies.

Facts

Mr Szoja is a Polish national is self-employed in Poland and employed Slovakia, where he has been registered on the national register of insured persons since 1 February 2013. In early 2013, the Polish social insurance institution (*Zakład Ubezpieczeń Społecznych*) decided that, since Mr Szoja has a residence in Poland where he was also self-employed, his insurance should be covered by Polish social security law. This decision was based on the marginal nature of the activity pursued by Mr Szoja in Slovakia and was also communicated to the Slovak social insurance fund. The Slovak social insurance scheme did not challenge the Polish provisional determination of the applicable law and so it became definitive for the purposes of Article 16(3) of the Implementing Regulation. The Slovak social insurance scheme decided that from 1 February 2013, Mr Szoja was not covered by compulsory health insurance, pension insurance or unemployment benefit insurance with his Slovakian employer. Mr Szoja appealed to the Slovak courts.

National proceedings

According to the Supreme Court of the Slovak Republic (*Najvyšší súd Slovenskej republiky*), the Polish social insurance institution had examined Mr Szoja's situation on the basis of Article 14(5)(b) of the Implementing Regulation,[1] and that that institution had also applied Article 13(1) of the Basic Regulation[2] in order to make a decision on Mr Szoja's situation. The Court took the view that Article 13(1) of the Basic Regulation only covers employed people, whereas the present case concerned a national who was both an employee and self-employed in more than one Member State. The Court found that the connecting factor for the purposes of determining the applicable law was the place where the person pursued the substantial part of his activity, in accordance with Article 14(8) of the Implementing Regulation. It was also noted that the Slovak social insurance fund did not rely on any agreement that derogates from the provisions of Article 13 of the Basic Regulation, which was based on Article 16 of the Implementing Regulation. The Supreme Court decided to stay the proceedings and to refer certain questions to the ECJ for a preliminary ruling.

Question put to the ECJ

Must Article 13(3) of the Basic Regulation be interpreted as meaning that, in determining the national legislation applicable by virtue of that provision to a person who is both employed and self-employed in different Member States, the requirements laid down in Articles 14(5b) and 16 of the Implementing Regulation must be taken into account?[3]

ECJ's findings

As is clear from recitals 1 and 45 of the Basic Regulation, that regulation aims to coordinate the national social security systems of the Member States in order to guarantee that the right to free movement of persons can be exercised effectively and, thereby, contribute towards improving their standard of living and conditions of employment within the EU. Article 11(1) of the Basic Regulation lays down the principle of a single applicable law, pursuant to which those to whom that law applies are subject to the law of a single Member State. That principle also aims to avoid the complications that could arise from the simultaneous application of several national laws and to eliminate unequal treatment which, for employed and self-employed workers moving within the EU, would arise if the law of different Member States overlapped (see, to that effect, *Piatkowski*, C-493/04).

Article 13(3) of the Basic Regulation provides that, in determining the law applicable to someone who is employed in one Member State and self-employed in another, the law of the Member State in which he is employed applies. (Thus, in the case at hand, as Mr Szoja was employed in Slovakia, that would suggest he should be covered by Slovak law.)

1. Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ 2009 L 284, p. 1), as amended by Regulation No 465/2012.
2. Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1), as amended by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012 (OJ 2012 L 149, p. 4).
3. The ECJ reformulated the question referred to it. There was also a second and third question referred to the ECJ, which will not be mentioned as the Court found that there was no need to answer the second question, and that the third was inadmissible.

doi: 10.5553/EELC/187791072017002003017

Dit artikel uit European Employment Law Cases is gepubliceerd door Boom juridisch en is bestemd voor anonieme bezoeker

However, by Article 14(5b) of the Basic Regulation, marginal activities should be disregarded for the purposes of determining the applicable law under Article 13. (Thus, as the activity pursued by Mr Szoja in Slovakia was marginal, this would suggest Polish law might apply.)

Further, it followed from Article 14(5b) of the Implementing Regulation that Article 16 of that regulation applies to all the situations laid down in Article 14. Article 16 indicates the procedure to follow in order to determine the law applicable under Article 13 of the Basic Regulation, and must be taken into consideration.

Ruling

Article 13(3) of Regulation (EC) No 883/2004, as amended by Regulation (EU) No 465/2012, must be interpreted as meaning that, in order to determine the national legislation applicable under that provision to a person, such as the applicant in the main proceedings, who normally pursues an activity as an employed person and an activity as a self-employed person in different Member States, the requirements laid down in Article 14(5b) and Article 16 of Regulation (EC) No 987/2009, as amended by Regulation No 465/2012, must be taken into account.

ECJ 6 April 2017, case C 336/15 (Unionen), Transfer of undertakings

Unionen – v – Almega Tjänsteförbunden and ISS Facility Services AB, Swedish case

Summary

A transferee must, when dismissing an employee over a year after a transfer of the undertaking, include the time he or she worked for the transferor in calculating the employee's length of service, as this is relevant for determining the period of notice to which the employee is entitled.

Facts

Employees BSA, JAH, JH and BL are members of Unionen. BSA was employed by Apoteket AB, and JAH, JH and BL were employed by AstraZeneca AB, before ISS became their employer following a transfer of the undertakings.

On 27 July 2011, ISS dismissed BSA on economic grounds, with six months' notice. At the time of her dismissal, BSA was over 55. Her length of service with Apoteket and ISS exceeded ten years. On 31 October 2011, ISS dismissed the other three employees, JAH, JH and BL, also on economic grounds and with six months' notice, later extended by an additional five months. Those employees were also 55 or more at the time of their dismissal and each had a length of service of over ten years through their employment with AstraZeneca AB and subsequently with ISS.

When the four employees were transferred to ISS, the transferors, Apoteket and AstraZeneca, were bound by collective agreements which said that where an employee who is dismissed on economic grounds is, at the time of his or her dismissal, aged between 55 and 64 years inclusive and has service of ten years, the notice period for dismissal must be extended by six months. ISS was also bound by a collective agreement, entered into between the employers' association Almega and the trade union Unionen. Under that agreement, an employee dismissed on economic grounds was entitled to notice identical to that provided by the collective agreements that were binding on the transferors.

When they were dismissed, ISS did not grant the extended period of six months' notice to employees BSA, JAH, JH and BL. ISS said the employees did not have a continuous period of service of ten years with the transferee and, for that reason, did not satisfy the conditions for the extension. Unionen believed that infringed the rights of its members and that ISS should have taken into account the length of service of BSA, JAH, JH and BL with the transferors. The trade union brought an action claiming that ISS should be ordered to provide compensation for the loss suffered by the employees as a result.

National proceedings

The Arbetsdomstolen (Labour Court, Sweden) decided to stay the proceedings and to refer a question to the ECJ for a preliminary ruling.

Questions put to the ECJ

Is it compatible with Directive 2001/23 (Acquired Rights Directive, 'ARD'), that when applying a provision in the transferee's collective agreement a year after the transfer of an undertaking, according to which continuous length of service with a single employer is a condition for the grant of an extended period of notice, length of service with the transferor need not be taken into account, in circumstances where the employees had the right to have that length of service taken into

doi: 10.5553/EELC/187791072017002003017