

2. The principle of primacy of EU law must be interpreted as precluding a national court, ruling following the setting aside of its judgment by a higher court, from being bound, in accordance with national procedural law, by the legal rulings of that higher court, where those assessments are not compatible with EU law.

ECJ 15 July 2021, joined cases C-152/20 and C-218/20 (SC Gruber Logistics), Applicable Law

DG, EH – v – SC Gruber Logistics SRL (C-152/20) and Sindicatul Lucrătorilor din Transporturi, DT – v – SC Samidani Trans SRL (C-218/20), Romanian cases

Summary

If parties choose the applicable law pursuant to Article 8(1) of the Rome I Regulation, the objectively applicable law (ex Article 8(2-4)) does not apply with the exception of ‘provisions that cannot be derogated from by agreement’. Moreover, the choice for the applicable law must be free, but is considered to be made freely even if the employee merely accepts a clause drafted by the employer.

Questions

1. Must Article 8 of the Rome I Regulation be interpreted as meaning that, where the law governing the individual employment contract has been chosen by the parties to that contract, and that law differs from the law applicable pursuant to paragraphs 2, 3 or 4 of that article, whether the application of the latter law must be excluded and, if so, to what extent?
2. Must Article 8 of the Rome I Regulation be interpreted as meaning that:
 1. first, the parties to an individual employment contract are to be regarded as being free to choose the law applicable to that contract even if a national provision requires the inclusion in that contract of a clause under which the contractual provisions are supplemented by national labour law and
 2. secondly, the parties to an individual employment contract are to be regarded as being free to choose the law applicable to that contract even if the contractual clause concerning that choice

is drafted by the employer, with the employee merely accepting it?

Ruling

1. Article 8(1) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) must be interpreted as meaning that, where the law governing the individual employment contract has been chosen by the parties to that contract, and that law differs from the law applicable pursuant to paragraphs 2, 3 or 4 of that article, the application of the latter law must be excluded with the exception of ‘provisions that cannot be derogated from by agreement’ under that law within the meaning of Article 8(1) of that regulation, provisions that can, in principle, include rules on the minimum wage.
2. Article 8 of Regulation No 593/2008 must be interpreted as meaning that:
 1. first, the parties to an individual employment contract are to be regarded as being free to choose the law applicable to that contract even if the contractual provisions are supplemented by national labour law pursuant to a national provision, provided that the national provision in question does not require the parties to choose national law as the law applicable to the contract, and
 2. secondly, the parties to an individual employment contract are to be regarded as being, in principle, free to choose the law applicable to that contract even if the contractual clause concerning that choice is drafted by the employer, with the employee merely accepting it.

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ECJ 16 September 2021, case C-410/19 (The Software Incubator Ltd), Miscellaneous

The Software Incubator Ltd – v – Computer Associates (UK) Ltd, UK Case

Summary

The concept of ‘sale of goods’ referred to in the self-employed commercial agents directive covers the supply of licensed computer software.