ECJ 11 November 2021, case C-168/20 (MH and ILA (Droits à pension en cas de faillite)), Social Insurance, Pension

BJ, OV – v – Mrs M, MH, ILA and Mr M, UK case

Summary

A (host) Member State cannot make the exclusion of pension rights from bankruptcy estate dependent on obtaining prior tax approval in that country, if the scheme has already been tax approved in the home Member State, unless there is an overriding reason of public interest to do so. The ECJ's summary of the case is available on: https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-11/cp210200en.pdf.

Question

Must Article 49 TFEU be interpreted as precluding a provision of the law of a Member State which makes, in principle, the full and automatic exclusion from the bankruptcy estate of pension rights accrued under a pension scheme dependent on the requirement that, at the time of the bankruptcy, the pension scheme be tax approved in that State, where that requirement is imposed in a situation where an EU citizen who had, prior to becoming bankrupt, exercised his right of free movement by moving permanently to that Member State for the purposes of pursuing a self-employed economic activity there, has pension rights accrued under a pension scheme established and tax approved in his home Member State?

Ruling

Article 49 TFEU must be interpreted as precluding a provision of the law of a Member State which makes, in principle, the full and automatic exclusion from the bankruptcy estate of pension rights accrued under a pension scheme dependent on the requirement that, at the time of the bankruptcy, the pension scheme concerned be tax approved in that Member State, where that requirement is imposed in a situation where an EU citizen who had, prior to becoming bankrupt, exercised his right of free movement by moving permanently to that Member State for the purposes of pursuing a self-employed economic activity there, has pension rights accrued under a pension scheme established and tax approved in his home Member State unless the restriction on freedom of establishment constituted by that national provision is justified in so far as it furthers an overriding reason relating to the public interest, is appropriate to ensure that the objective it pursues is achieved and does not go beyond what is necessary to achieve that objective.

ECJ 25 November 2021, case C-233/20 (job-medium), Paid Leave

WD – v – job-medium GmbH in liquidation, Austrian case

Summary

Directive 2003/88 precludes provisions which deny a worker an allowance in lieu for untaken leave when his employment relationship ends, even if the employee terminated it without good cause.

Question

1. Must Article 7 of Directive 2003/88, read in the light of Article 31(2) of the Charter, be interpreted as precluding a provision of national law under which no allowance in lieu of paid annual leave not taken is payable in respect of the current last year of employment, where the worker unilaterally terminates the employment relationship early without cause.
2. In the event that the first question is answered in the negative: to what extent and according to which criteria is it for the referring court to verify whether the worker was unable to take his or her paid leave?

Ruling

1. Article 7 of 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, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as precluding a provision of national law under which no allowance is payable in lieu of paid annual leave not taken in respect of the current and last year of employment, where the worker unilaterally terminates the employment relationship early and without cause.

doi: 10.5553/EELC/187791072021006004010