

Question

Must Article 45 TFEU and Article 3(1)(b) of Regulation No 492/2011 be interpreted as precluding national legislation that provides that only candidates who have gained a certain amount of professional experience at national public higher-education institutions for the fine arts, music and dance may be admitted to a procedure for inclusion on the lists compiled for the purpose of recruiting, on permanent or temporary employment contracts, staff in those institutions and that thus prevents professional experience gained in other Member States from being taken into consideration for the purpose of admission to that procedure?

Ruling

Article 45 TFEU and Article 3(1)(b) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union must be interpreted as precluding national legislation that provides that only candidates who have gained a certain amount of professional experience at national public higher-education institutions for the fine arts, music and dance may be admitted to a procedure for inclusion on the lists compiled for the purpose of recruiting, on permanent or temporary employment contracts, staff in those institutions and that thus prevents professional experience gained in other Member States from being taken into consideration for the purpose of admission to that procedure.

ECJ 15 June 2023, case C-411/22 (Thermalhotel Fontana), Free Movement, Social Insurance

Thermalhotel Fontana Hotelbetriebsgesellschaft mbH – v – Bezirkshauptmannschaft Südoststeiermark, Austrian case

Summary

Compensation granted during Covid-19 isolation does not qualify as ‘sickness benefit’ within the meaning of Regulation 883/2004. However granting such compensation only to domestic quarantined workers is indirectly discriminatory (and illegitimate), as cross-border workers are denied such compensation. The ECJ’s summary of the judgment is available on: <https://>

curia.europa.eu/jcms/upload/docs/application/pdf/2023-06/cp230100en.pdf.

Question

1. Must Article 3(1)(a) of Regulation No 883/2004 be interpreted as meaning that compensation, financed by the State, which is due to workers for the pecuniary disadvantages caused by the impediment to their employment during their isolation as persons infected with, suspected of being infected with, or suspected of being contagious with COVID-19 constitutes a ‘sickness benefit’, referred to in that provision, and therefore comes within the scope of that regulation?
2. Must Article 45 TFEU and Article 7 of Regulation No 492/2011 be interpreted as precluding legislation of a Member State under which the granting of compensation for loss of earnings suffered by workers as a result of isolation ordered following a positive COVID-19 test result is subject to the condition that the imposition of the isolation measure be ordered by an authority of that Member State under that legislation?

Ruling

1. Article 3(1)(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems must be interpreted as meaning that compensation, financed by the State, which is due to workers for the pecuniary disadvantages caused by the impediment to their employment during their isolation as persons infected with, suspected of being infected with, or suspected of being contagious with COVID-19 does not constitute a ‘sickness benefit’, referred to in that provision, and does not therefore come within the scope of that regulation.
2. Article 45 TFEU and Article 7 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union must be interpreted as precluding legislation of a Member State under which the granting of compensation for loss of earnings suffered by workers as a result of isolation ordered following a positive COVID-19 test result is subject to the condition that the imposition of the isolation measure be ordered by an authority of that Member State under that legislation.