ECJ 21 January 2016, case C-515/14 (Cyprus), freedom of movement

European Commission – v – Republic of Cyprus

Summary

Cypriot law on civil servants' pensions violates EU law.

Facts

Cypriot law provides (briefly stated) that a civil servant, hired prior to 1 October 2011, who resigns and leaves Cyprus before the age of 45 loses the right to have his pension consolidated and paid at the age of 55, whereas a civil servant who continues to be employed as a civil servant in Cyprus retains that right. In 2012, the Commission notified Cyprus that the relevant statutory provision was incompatible with Articles 45 and 48 TFEU on free movement. Cyprus disagreed and, following an exchange of arguments, the Commission brought an action against Cyprus.

ECJ's findings

1. Articles 45 to 48 TFEU are intended in particular to prevent a worker who, by exercising his right of freedom of movement, has been employed in more than one Member State, from being treated without objective justification, less favourably than one who has completed his entire career in only one Member State (§42).
2. In the present case it is apparent that a civil servant under the age of 45 who resigns from employment in the Cypriot civil service to carry on a professional activity in another Member State (or within an EU institution or other international organisation) loses the right to have his pension consolidated and paid at the age of 55, whereas a civil servant who continues in employment in that job or who leaves to take up another civil service position in Cyprus retains that right (§43).
3. It follows that the Cypriot legislation at issue in the present case is likely to hinder, or to make less attractive, the exercise of the right to freedom of movement by the Cypriot civil servants concerned. The legislation may deter those civil servants from leaving their employment within the civil service of their Member State of origin to carry out a professional activity in another Member State, within an EU institution or other international organisation and, therefore, constitutes an obstacle to the freedom of movement for workers which is, in principle, prohibited by Article 45 TFEU (§44).

Order

The ECJ declares that by failing to repeal, with retroactive effect from 1 May 2004, the age-related criterion in Article 27 of Law 97(I)/1997 on Pensions, which deters workers from leaving their Member State of origin in order to work in another Member State, or within an EU institution, or other international organisation and which has the effect of creating unequal treatment between migrant workers including those who work within the EU institutions or within another international organisation, on the one hand, and civil servants who have worked in Cyprus, on the other, the Republic of Cyprus has failed to fulfil its obligations under Articles 45 TFEU and 48 TFEU and under Article 4(3) TEU.

ECJ 21 January 2016, case C-453/14 (Knauer), free movement – social security

Vorarlberger Gebietskrankenkasse – v – Alfred Knauer and Landeshauptmann von Vorarlsberg – v – Rudolf Mathis, Austrian case

Summary

Austrian statutory pension benefits and Liechenstein occupational pension benefits are "equivalent".

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Facts

Mr Knauer and Mr Mathis reside in Austria and, in their capacity as recipients of an Austrian pension, are insured under the Austrian health insurance scheme. On account of their previous employment in Switzerland and Liechtenstein, they receive old-age pensions provided by a pension fund under the Liechtenstein occupational pension scheme. The Austrian Health Insurance Fund requires Knauer and Mathis to pay contributions in respect of their Liechtenstein pension benefits.

National proceedings

Knauer and Mathis brought proceedings, following which the amount of their contributions to the health insurance scheme were reduced on the ground that only a portion of the occupational pension scheme, namely that corresponding to the minimum statutory benefits, was within the scope of Regulation 883/2004. The Health Insurance Fund brought an appeal against both those decisions and Knauer cross-appealed. According to the Health Insurance Fund, the contributions payable must be calculated on the basis of the whole of the pension payments made by the Liechtenstein pension fund to Knauer and Mathis, whilst, in Knauer's submission, no contribution at all is due on those pension payments. The issue before the referring court came down to whether the Austrian pension and Liechtenstein pensions are 'equivalent' within the meaning of Article 5(a) of Regulation 883/2004, which provides that "where, under the legislation of the competent Member State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State".

ECJ's findings

1. The concept of 'equivalent benefits' within the meaning of Article 5(a) of that regulation must be interpreted as referring, in essence, to two old-age benefits that are comparable. As regards the comparability of such old-age benefits, account must be taken of the aim pursued by those benefits and by the legislation which established them (§33-34).
2. The aim of both the old-age benefits paid under the Liechtenstein occupational pension scheme and those paid under the Austrian statutory pension scheme is to ensure that the recipients of the benefits maintain a standard of living commensurate with that which they enjoyed prior to retirement. It follows that old-age benefits such as those at issue in the main proceedings must be regarded as being comparable. The fact that there are differences relating, *inter alia*, to the way in which the rights to those benefits have been acquired, or to the fact that it is possible for the insured to obtain voluntary supplementary benefits, does not give grounds for reaching a different conclusion.

Judgment

Article 5(a) of Regulation (EC) No 883/2004 […] on the coordination of social security systems must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, old-age benefits provided under an occupational pension scheme of one Member State and those provided under a statutory pension scheme of another Member State — both schemes being within the scope of that regulation — are equivalent benefits within the meaning of that provision, where both categories of benefits have the same aim of ensuring that their recipients maintain a standard of living commensurate with that which they enjoyed prior to retirement.

ECJ 25 February 2016, case C-299/14 (Garcia-Nieto), free movement – social security

Vestische Arbeit Jobcenter Kreis Recklinghausen – v – Jovanna García-Nieto, German case

Summary

An unemployed EU citizen moving to another Member State is not entitled to social assistance in that State for the first three months.

Facts

Regulation 883/2004 on the coordination of social security systems covers social security, not social assistance ('welfare'). However, there is a hybrid category of benefits that have characteristics both of social security and of social assistance. An example is the German 'basic provision for jobseekers'. It consists of two elements: (i) benefits for integration into the labour market and (ii) benefits to cover "subsistence costs". Such hybrid benefits are dealt with in Article 70 of Regulation 883/2004.

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