ECJ 21 June 2018, C-1/17 (Petronas Lubricants), Private international law

Petronas Lubricants Italy SpA – v – Livio Guida, Italian case

Facts

Mr Guida was employed by PL Italy and at a certain point posted to the affiliated Polish company, PL Poland. In 2014, Mr Guida's parallel employment contracts with these two companies were terminated among allegations of wrongly-claimed reimbursements. Mr Guida, who is domiciled in Poland, sued his Italian employer in Italy for wrongful dismissal. PL Italy later brought a counterclaim for repayment of sums it said Mr Guida had wrongfully received, but this was based, not on its own legal rights, but on an assignment to it of claims by PL Poland, made after the original proceedings had started. Mr Guida argued that under Article 20(1) and (2) and Article 6(3) of Regulation No 44/2001 (Brussels Regulation), the Italian court lacked jurisdiction to hear the counterclaim.

Legal background

The case revolves around the Brussels Regulation (Regulation No 44/2001). There is a recast version of this Regulation (Regulation No 1215/2012) with similar wording, but the original Regulation applies to the case at hand, as the proceedings were initiated before 10 January 2015. However, the outcome of the case is also relevant for the Recast Regulation.

Article 20(1) of the Brussels Regulation states that an employer can only bring a claim against an employee in the court of the Member State in which the employee is domiciled. In this case, this would mean that PL Italy could only bring the claim for repayment of the sums it said Mr Guida had wrongfully received before the Polish court, as Mr Guida was domiciled in Poland. However, Article 20(2) contains an exception to the rule, allowing the employer to bring a counterclaim in the courts chosen by the employee, which, in this case, were the Italian courts. Moreover, Article 6(3) of the Brussels Regulation states that a party can also be sued via a counterclaim arising from the contract or facts on which the original claim was based in the court in which the original claim is pending – which, again, would be Italy. The dispute in this case revolves around the question of whether that exception is also available for counterclaims assigned to the employer after the commencement of proceedings.

National proceedings

The District Court of Turin found Mr Guida's dismissal unfair and held that it did not have jurisdiction to hear the counterclaim brought by PL Italy. It took the view that the exception in Article 20(2) applied only if an employer was claiming in relation to its own legal rights, and did not apply if the employer was asserting claims that acquired from elsewhere. PL Italy appealed against the judgment in relation to the counterclaim to the Court of Appeal of Turin. This Court decided to refer a question to the ECJ.

Question

Must Article 20(2) of the Brussels Regulation be interpreted as meaning that an employer has the right to bring a counterclaim after commencement of the original proceedings, based on a claim-assignment agreement between the employer and the holder of that claim, before the court which is properly seised of the original proceedings brought by the employee?

Consideration

The ECJ first recalled that the objective of the rules relating to contracts of employment within the Brussels Regulation was to protect the weaker party to the contract by means of rules of jurisdiction that were more favourable to his or her interests. However, it is apparent from the wording of Article 20(2) that this should not affect the employer's right to bring a counterclaim in the court in which the original claim is pending. Provided the choice of court made by the employee is respected, the objective of favouring the employee is achieved and there is no reason to limit the possibility of examining both the claim and counterclaim.

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However, a counterclaim can only be brought in the court chosen by the employee if it fulfils the more specific requirements of Article 6(3) of the Regulation (as this concept is not defined in Article 20(2) itself). According to Article 6(3), the counterclaim must have arisen from the contract or facts on which the original claim was based. The ECJ refers to prior case law (*Kostanjevec,* C-185-15) which illustrates that both claims must have 'a common origin'. This may be found in a contract or from the facts. In this case, Mr Guida's dismissal arose from the same facts as those underlying the counterclaim brought by PL Italy – and it therefore did not matter that the counterclaim had in fact been assigned to the employer after the commencement of proceedings.

Ruling

Article 20(2) of the Brussels Regulation must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, an employer has the right to bring a counterclaim before a court properly seised of the original claim by the employee, based on a claim-assignment agreement concluded after commencement of the original proceedings and made between the employer and the original holder of that claim.

ECJ 28 June 2018, case C-2/17 (Crespo Rey), Social Insurance

Instituto Nacional de la Seguridad Social (INSS) – v – Jesús Crespo Rey, Spanish Case

Question

Must the Agreement on the free movement of persons be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which obligates a migrant worker who concludes a special agreement with the social security system of that Member State to make contributions in accordance with the minimum contribution basis, with the result that, when the theoretical amount of that worker's retirement pension is calculated, the competent body of that Member State treats the period covered by that agreement as a period completed in that Member State and will take into consideration, for the purposes of that calculation, only the contributions paid by the worker under that agreement, even though, before exercising his right to free movement, the latter made contributions in that Member State in accordance with contribution bases higher than the minimum, and a non-migrant worker who did not exercise his right to free movement and who concludes such an agreement has the possibility of making contributions in accordance with contribution bases higher than the minimum?

Ruling

The Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed at Luxembourg on 21 June 1999, must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which obligates a migrant worker who concludes a special agreement with the social security system of that Member State to make contributions in accordance with the minimum contribution basis, with the result that, when the theoretical amount of that worker's retirement pension is calculated, the competent body of that Member State treats the period covered by that agreement as a period completed in that Member State and will take into consideration, for the purposes of that calculation, only the contributions paid by the worker under that agreement, even though, before exercising his right to free movement, that worker made contributions in that Member State in accordance with contribution bases higher than the minimum, and a non-migrant worker who did not exercise his right to free movement and who concludes such an agreement has the option of making contributions in accordance with contribution bases higher than the minimum.

ECJ 28 June 2018, case C-57/17 (Checa Honrado), Insolvency

Eva Soraya Checa Honrado – v – Fondo de Garantía Salarial, Spanish case

Legal background

Directive 2008/94/EC aims to protect employees whose employer has become insolvent. Article 3 provides that Member States must take the measures necessary to ensure that the various guarantee institutions pay outstanding claims by employees based on their employment relationships, including severance pay on termination of the employment contract, where this is provided for by national law. This is subject to the limits described in Article 4.

Spain has implemented the Directive by means of a Royal Decree. This guarantees employees a severance payment based on Articles 50 to 52 of the Spanish

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