ECJ 28 February 2019, case C-579/17 (BUAK), Social insurance

BUAK Bauarbeiter-Urlaubs- u. Abfertigungskasse – v – Gradbeništvo Korana d.o.o., Austrian case

Questions

Must Article 1 of Regulation No 1215/2012 be interpreted as meaning that an action for payment of wage supplements in respect of annual leave pay brought by a body governed by public law against an employer, in connection with the posting of workers to a Member State where they do not have their habitual place of work, or in the context of the provision of labour in that Member State, or against an employer established outside of the territory of that Member State in connection with the employment of workers who have their habitual place of work in that Member State, falls within the scope of application of that regulation?

Ruling

Article 1 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action for payment of wage supplements in respect of annual leave pay brought by a body governed by public law against an employer, in connection with the posting of workers to a Member State where they do not have their habitual place of work, or in the context of the provision of labour in that Member State, or against an employer established outside of the territory of that Member State in connection with the employment of workers who have their habitual place of work in that Member State, falls within the scope of application of that regulation, in so far as the modalities for bringing such an action do not infringe the rules of general law and, in particular, do not exclude the possibility for the court ruling on the case to verify the merits of the information on which the establishment of that claim is based, which is a matter to be determined by the referring court.

ECJ 13 March 2019, case C-437/17 (Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach GmbH), Free movement

Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach GmbH – v – EurothermenResort Bad Schallerbach GmbH, Austrian case

Summary

The freedom of movement of workers does not preclude legislation which advantages periods of service in a Member State's own territory for the purpose of calculating annual leave rights.

Legal background

Article 45 TFEU provides for the freedom of movement of workers within the EU. Article 45(2) provides that this shall entail the abolition of any discrimination based on nationality as regards *inter alia* employment conditions. Article 7(1) of Regulation No 492/2011 provides the same.

The Austrian law on holidays (*Urlaubgesetz*) provides employees with paid annual leave. This amounts to 30 days where the length of service is less than 25 years. It increases to 36 days after completion of the 25th year of service. Paragraph 3 of the *Urlaubgesetz inter alia* provides that any period of service of at least six months spent in another employment relationship in the national territory shall also be credited for calculating the days of leave, however up to a maximum of five years in total.

Facts

Eurothermen operates in the tourism sector and employs various workers who have completed previous periods of service with different employers outside Austria but within EU Member States. The works council of Eurothermen brought an action against Eurothermen and claimed that all previous years of service, in and outside Austria, be taken into account in establishing the number of days of leave. It asserted that distinguishing between periods of service in Austria and abroad would be in breach of Article 45 TFEU. The works council's claim was rejected in both First Instance and Appeal.

doi: 10.5553/EELC/187791072019004001013