ECJ 18 December 2019, case C-447/18 (UB), Social insurance

UB – v – Generálny riaditeľ Sociálnej poisťovne Bratislava, Slovakian case

Summary

Additional benefits paid to high-level sportspersons who have represented a Member State or its legal predecessors are not 'old-age benefits' within the meaning of Article 3(1)(d) of Regulation 883/2004, but Article 7(2) of Regulation 492/2011 preclude that they are made conditional of having the nationality of that Member State.

Question

Are Article 1(w) and Articles 4 and 5 of Regulation No 883/2004, read in conjunction with Article 34(1) and (2) of the Charter, to be interpreted as precluding legislation of a Member State which makes receipt of an additional benefit introduced for certain high-level sportspersons who have represented that Member State or its legal predecessors in international sporting competitions conditional upon, in particular, the person applying for the benefit having the nationality of that Member State?

Ruling

1. Article 3(1)(d) 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 an additional benefit paid to certain high-level sportspersons who have represented a Member State or its legal predecessors in international sporting competitions is not covered by the 'old-age benefit' referred to in that provision and, consequently, falls outside the scope of that regulation.
2. Article 7(2) 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 which makes receipt of an additional benefit introduced for certain high-level sportspersons who have represented that Member State or its legal predecessors in international sporting competitions conditional upon, in particular, the person applying for the benefit having the nationality of that Member State.

ECJ 19 December 2019, case C-16/18 (Dobersberger), Private international law, posting of workers

Michael Dobersberger – v – Magistrat der Stadt Wien, Austrian case

Summary

On-board services on international trains do not fall under the scope of Directive 96/71/EC concerning the posting of workers if most of the work is performed in one Member State.

Legal background

Directive 96/71 contains rules on the international posting of workers from one Member State to another. According to Article 1(3)(a), its scope *inter alia* shall apply to the situation where undertakings post workers to the territory of a Member State on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State, provided that there is an employment relationship between the undertaking making the posting and the worker during the period of posting. If this is the case, such posted workers should be entitled to a 'hard core' of minimum employment conditions, stipulated in Article 3.

Austria implemented Directive 96/71 into the *Arbeitsvertragsrechts-Anpassungsgesetz*. The implementation legislation also contains registration requirements. Breach of these requirements will lead to sanctions.

Facts

Österreichische Bundesbahnen (ÖBB) entered into a service contract for on-board services for some trains to D, a company with its registered office in Austria. However, that contract was performed by Henry am Zug Hungary (H. Kft.), a company governed by Hungarian law and established in Hungary, via a series of subcontracts involving H. GmbH, which also has its head office in Austria. H. Kft. provided services on certain ÖBB trains from Budapest (Hungary) to either Salzburg (Austria) or Munich (Germany) as the station of departure or destination. It used workers domiciled in Hun-

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