

ECJ 22 January 2020, case C-32/19 (Pensionsversicherungsanstalt), Free movement

AT – v – Pensionsversicherungsanstalt, Austrian case

Summary

The requirements to obtain a right of residence by way of working for 12 months in the last 3 years also apply to persons who have reached the pensionable age during that period.

Question

Must Article 17(1)(a) of Directive 2004/38 be interpreted as meaning that, for the purpose of acquiring the right of permanent residence in the host Member State before completion of a continuous period of 5 years of residence, the conditions that the person must have been working in that Member State for at least the preceding 12 months and must have resided in that Member State continuously for more than 3 years apply to workers who, at the time they stop working, have reached the age laid down by the law of that Member State for entitlement to an old age pension?

Ruling

Article 17(1)(a) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as meaning that, for the purpose of acquiring the right of permanent residence in the host Member State before completion of a continuous period of 5 years of residence, the conditions that a person must have been working in that Member State at least for the preceding 12 months and must have resided in that Member State continuously for more than 3 years apply to workers who, at the time they stop working, have reached the age laid down by the law of that Member State for entitlement to an old age pension.

ECJ 23 January 2020, case C-29/19 (Bundesagentur für Arbeit), Social insurance

ZP – v – Bundesagentur für Arbeit, German case

Summary

German provisions disregarding salary obtained under another jurisdiction when calculating unemployment benefits found contrary to Regulation 883/2004.

Questions

1. Must Article 62(1) and (2) of Regulation No 883/2004 be interpreted as precluding legislation of a Member State which, while providing that the calculation of unemployment benefits is to be based on the amount of the previous salary, does not allow — where the period during which the person concerned was in receipt of a salary in respect of his or her last activity as an employed person pursued under that legislation is shorter than the reference period laid down by that legislation for determining the salary to be used as the basis for calculating unemployment benefits — for account to be taken of the salary received by the person concerned in respect of that activity?
2. Must Article 62(1) and (2) of Regulation No 883/2004 be interpreted as precluding legislation of a Member State which, while providing that the calculation of unemployment benefits is to be based on the amount of the previous salary, does not allow — where the salary received by the person concerned in respect of the last activity pursued as an employed person under that legislation was not calculated or paid until after his or her employment relationship came to an end — for account to be taken of the salary received by the person concerned for that activity?

Ruling

1. Article 62(1) and (2) 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 precluding legislation of a Member State which, while providing that the calculation of unemployment benefits is to be based on the amount of the previ-

ous salary, does not allow — where the period during which the person concerned was in receipt of a salary in respect of his or her last activity as an employed person pursued under that legislation is shorter than the reference period laid down by that legislation for determining the salary to be used as the basis for calculating unemployment benefits — for account to be taken of the salary received by the person concerned in respect of that activity.

- Article 62(1) and (2) of Regulation (EC) No 883/2004 must be interpreted as precluding legislation of a Member State which, while providing that the calculation of unemployment benefits is to be based on the amount of the previous salary, does not allow — where the salary received by the person concerned in respect of the last activity pursued as an employed person under that legislation was not calculated or paid until after his or her employment relationship came to an end — for account to be taken of the salary received by the person concerned for that activity.

ECJ 30 January 2020, case C-395/18 (Tim), Miscellaneous

Tim SpA — Direzione e coordinamento Vivendi SA – v – Consip SpA, Ministero dell'Economia e delle Finanze, Italian case

Question

Do Directive 2014/24 and the principle of proportionality preclude national legislation under which the contracting authority is required automatically to exclude an economic operator from the contract award procedure where the ground for exclusion referred to in Article 57(4)(a) of that directive is found in respect of one of the subcontractors mentioned in that operator's tender?

Ruling

Article 57(4)(a) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC does not preclude national legislation under which the contracting authority has the option, or even the obligation, to exclude the economic operator who submitted the tender from participation in the contract award procedure where the ground for exclusion referred to in that provision is established in respect of one of the subcontractors mentioned in that operator's tender. However, that provision, read in conjunction

with Article 57(6) of that directive, and the principle of proportionality preclude national legislation providing for the automatic nature of such an exclusion.

ECJ 26 February 2020, case C-427/18 P (EEAS), Miscellaneous

European External Action Service (EEAS) – v – Ruben Alba Aguilera and Others, EU case

Summary

Reduction of allowance for living costs for EEAS staff – ECJ annuls judgment of General Court – case referred back to the General Court.

Decision

The Court (Ten Chamber):

- Annuls paragraphs 1 and 3 of the operative part of the judgment of the General Court of the European Union of 13 April 2018, Alba Aguilera and Others v EEAS (T-119/17, EU:T:2018:183).
- Refers the case back to the General Court of the European Union.
- Orders that the costs be reserved.

ECJ 27 February 2020, joined cases C-773/18 – C-775/18 (Land Sachsen- Anhalt), Age Discrimination

TK, UL, VM – v – Land Sachsen-Anhalt, German case

Summary

General subsequent payment based on salary step not found discriminatory, provided that it protects existing acquired rights and if it does not prolong age discrimination. A summary will be provided on www.eelc-online.com once an English translation becomes available. For now, please find the case here: