2. The principle of primacy of EU law must be interpreted as precluding a national court, ruling following the setting aside of its judgment by a higher court, from being bound, in accordance with national procedural law, by the legal rulings of that higher court, where those assessments are not compatible with EU law.

ECJ 15 July 2021, joined cases C-152/50 and C-218/20 (SC Gruber Logistics), Applicable Law

DG, EH – v – SC Gruber Logistics SRL (C-152/20) and Sindicatul Lucrătorilor din Transporturi, DT – v – SC Samidani Trans SRL (C-218/20), Romanian cases

Summary

If parties choose the applicable law pursuant to Article 8(1) of the Rome I Regulation, the objectively applicable law (ex Article 8(2-4) does not apply with the exception of 'provisions that cannot be derogated from by agreement'. Moreover, the choice for the applicable law must be free, but is considered to be made freely even if the employee merely accepts a clause drafted by the employer.

Questions

1. Must Article 8 of the Rome I Regulation be interpreted as meaning that, where the law governing the individual employment contract has been chosen by the parties to that contract, and that law differs from the law applicable pursuant to paragraphs 2, 3 or 4 of that article, whether the application of the latter law must be excluded and, if so, to what extent?
2. Must Article 8 of the Rome I Regulation be interpreted as meaning that:
    1. first, the parties to an individual employment contract are to be regarded as being free to choose the law applicable to that contract even if a national provision requires the inclusion in that contract of a clause under which the contractual provisions are supplemented by national labour law and
    2. secondly, the parties to an individual employment contract are to be regarded as being free to choose the law applicable to that contract even if the contractual clause concerning that choice is drafted by the employer, with the employee merely accepting it?

Ruling

1. Article 8(1) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) must be interpreted as meaning that, where the law governing the individual employment contract has been chosen by the parties to that contract, and that law differs from the law applicable pursuant to paragraphs 2, 3 or 4 of that article, the application of the latter law must be excluded with the exception of 'provisions that cannot be derogated from by agreement' under that law within the meaning of Article 8(1) of that regulation, provisions that can, in principle, include rules on the minimum wage.
2. Article 8 of Regulation No 593/2008 must be interpreted as meaning that:
    1. first, the parties to an individual employment contract are to be regarded as being free to choose the law applicable to that contract even if the contractual provisions are supplemented by national labour law pursuant to a national provision, provided that the national provision in question does not require the parties to choose national law as the law applicable to the contract, and
    2. secondly, the parties to an individual employment contract are to be regarded as being, in principle, free to choose the law applicable to that contract even if the contractual clause concerning that choice is drafted by the employer, with the employee merely accepting it.

ECJ 16 September 2021, case C-410/19 (The Software Incubator Ltd), Miscellaneous

The Software Incubator Ltd – v – Computer Associates (UK) Ltd, UK Case

Summary

The concept of 'sale of goods' referred to in the self-employed commercial agents directive covers the supply of licensed computer software.

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Question

Must the concept of 'sale of goods' referred to in Article 1(2) of Directive 86/653 be interpreted as meaning that it can cover the supply, in return for payment of a fee, of computer software to a customer by electronic means where that supply is accompanied by the grant of a perpetual licence to use that software?

Ruling

The concept of 'sale of goods' referred to in Article 1(2) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents must be interpreted as meaning that it can cover the supply, in return for payment of a fee, of computer software to a customer by electronic means where that supply is accompanied by the grant of a perpetual licence to use that software.

ECJ 30 September 2021, case C-285/20 (Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen (Uwv)), Social Insurance

K – v – Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen (Uwv), Dutch Case

Summary

Article 65 (2 and 5) must be interpreted as applying to applicants who received sickness benefits in another member state if the social security legislation of the competent member state equates receiving sickness benefits to the pursuit of an activity.

Questions

1. Must Article 65(2) and (5) of Regulation No 883/2004 be interpreted as applying to a situation in which, before being wholly unemployed, the person concerned resided in a Member State other than the competent Member State and was not actually employed, but was on sick leave and received, on that basis, sickness benefits paid by the competent Member State?
2. Must Article 65(2) and (5) of Regulation No 883/2004 be interpreted as meaning that the reasons, in particular of a family nature, for which the person concerned has transferred his or her residence to a Member State other than the competent Member State are relevant for the purposes of the application of that provision?

Ruling

1. Article 65(2) and (5) 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, as amended by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012, must be interpreted as applying to a situation in which, before being wholly unemployed, the person concerned resided in a Member State other than the competent Member State and was not actually employed but was on sick leave and received, on that basis, sickness benefits paid by the competent Member State, provided, however, that, in accordance with the national law of the competent Member State, entitlement to such benefits is treated in the same way as the pursuit of an activity as an employed person.
2. Article 65(2) and (5) of Regulation No 883/2004, as amended by Regulation No 465/2012, must be interpreted as meaning that the reasons, in particular of a family nature, for which the person concerned has transferred his or her residence to a Member State other than the competent Member State do not have to be taken into account for the purposes of applying that provision.

ECJ 6 October 2021, case C-431/20 P (Tognoli and Others v Parliament), Miscellaneous

Carlo Tognoli and Others – v – European Parliament, EU Case

Summary

Successful appeal against General Court Order dated 3 July 2020 on rejection of claims regarding recovery of pension amounts. The case is referred back to the General Court for a ruling on the claims made by Mr Tognoli and Others.

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