

ECJ 15 September 2022, case C-22/21 (Minister for Justice and Equality (Ressortissant de pays tiers cousin d'un citoyen de l'Union)), Work and residence permit

SRS, AA – v – Minister for Justice and Equality Irish case

Summary

The concept of ‘any other family members who are members of the household of the Union citizen having the primary right of residence’ in point (a) of the first subparagraph of Article 3(2) of Directive 2004/38/EC refers to persons who have a relationship of dependence with that citizen, based on close and stable personal ties, forged within the same household, in the context of a shared domestic life going beyond a mere temporary cohabitation entered into for reasons of pure convenience.

Question

How must the concept of ‘any other family members who are members of the household of the Union citizen having the primary right of residence’, referred to in point (a) of the first subparagraph of Article 3 (2) of Directive 2004/38 be interpreted, so as to clarify the criteria which are to be taken into consideration in that respect?

Ruling

Point (a) of the first subparagraph of Article 3(2) 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: the concept of ‘any other family members who are members of the household of the Union citizen having the primary right of residence’, mentioned in

that provision, refers to persons who have a relationship of dependence with that citizen, based on close and stable personal ties, forged within the same household, in the context of a shared domestic life going beyond a mere temporary cohabitation entered into for reasons of pure convenience.

ECJ 15 September 2022, case C-58/21 (Rechtsanwaltskammer Wien), Social insurance, pension

FK – v – Rechtsanwaltskammer Wien, Austrian case

Summary

The conflict rules in Article 13(2) of Regulation (EC) No 883/2004 are not applicable when a person who resides in one Member State where the centre of interests of his or her activities is also situated, whilst pursuing an activity in two other Member States. Furthermore, EU law precludes national legislation which makes the award of an early retirement pension applied for conditional on the waiver by the person concerned of the right to practice as a lawyer, without taking into account, in particular, the Member State in which the activity concerned is pursued.

Questions

1. Which legislation is applicable under Article 13(2) (b) of Regulation No 883/2004 where the place of residence and the centre of interest of the activities of the person concerned are situated in Switzerland and that person also pursues an activity – which is distributed unevenly – in two other Member States, within the meaning of Article 1(2) of Annex II to the EC-Switzerland Agreement, namely in Germany and Austria?
2. Must EU law be interpreted as precluding national legislation which makes the award of an early retirement pension applied for conditional on the waiver by the person concerned of the right to practice as a lawyer not only in the territory of the Member State concerned but also abroad?

Ruling

1. The conflict rules laid down in Article 13(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 are not applicable to the situation of a person who resides in the Member State in which the centre of interests of his or her activities is also situated, whilst pursuing an activity – which is distributed unevenly – in two other Member States, where it is necessary to determine whether that person has direct rights vis-à-vis the institutions of one of those two other Member States by virtue of contributions paid during a given period.
2. Articles 45 and 49 TFEU must be interpreted as precluding national legislation which makes the award of an early retirement pension applied for conditional on the waiver by the person concerned of the right to practise as a lawyer, without taking into account, in particular, the Member State in which the activity concerned is pursued.

ECJ 22 September 2022, case C-120/21 (LB (Prescription du droit au congé annuel payé)), Paid leave

LB – v – TO, German case

Summary

The right to annual leave precludes national legislation according to which the right to annual leave can expire without having enabled the worker to exercise that right.

Question

Must Article 7 of Directive 2003/88 and Article 31(2) of the Charter be interpreted as precluding national legislation under which the right to paid annual leave acquired by a worker in respect of a given reference period is time-barred after a period of three years which begins to run at the end of the year in which that right arose, where the employer has not actually put the worker in a position to exercise that right?

Ruling

Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time and Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national legislation under which the right to paid annual leave acquired by a worker in respect of a given reference period is time-barred after a period of three years which begins to run at the end of the year in which that right arose, where the employer has not actually put the worker in a position to exercise that right.

ECJ 22 September 2022, case C-518/20 (Fraport), Paid leave

XP – v – Fraport AG Frankfurt Airport Services Worldwide, German case

Summary

Article 7 of Directive 2003/88/EC and Article 21(2) of the Charter preclude national legislation under which the entitlement to paid annual leave, acquired by a worker during the leave year in the course of which that worker actually worked before finding him or herself in a state of total invalidity or incapacity for work due to illness which has persisted since, may lapse, either at the end of a carry-over period authorised under national law, or even at a later stage, where the employer has not, in good time, enabled the worker to exercise that entitlement.

Question

Must Article 7 of Directive 2003/88/EC and Article 31(2) of the Charter be interpreted as precluding national legislation under which entitlement to paid annual leave acquired by a worker during the leave year in the course of which total invalidity or incapacity for work due to illness occurred and which has persisted since, may lapse, either at the end of a carry-over period authorised under national law, or at a later stage, where the employer has not enabled the worker to exercise that leave entitlement in good time?