

WORKSHOP FULDA-AUTH 25/06/2021

**Practical Questions arising from the implementation of Regulation
883/2004 on Coordination of Social Security Systems**

**Recent Case Law on Coordination of Social Security Systems under
Regulation 883/2004**

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Overview of the selected judgements

- **30 Judgements** of the Court of Justice of EU over a period of 5 years dealing with **a wide range of issues** concerning social security benefits, special non-contributory benefits, social security contributions and applicable legislation:
 - Old-age benefits (4 cases)
 - Sickness benefits (4 cases)
 - Invalidity benefits (1 case)
 - Family benefits (6 cases)
 - Unemployment benefits (2 cases)
 - Special non-contributory benefits (1 case)
 - Social security contributions (3 cases)
 - Applicable legislation (including posting, third-country nationals) (9 cases)

Old-age benefits

- Judgement of 30.5.2018, Case C–517/16, Czerwiński → Distinction between the old-age benefits and the pre-retirement benefits –the latter pursue an objective connected with employment policy inasmuch as they help to release posts held by workers who are near to the age of retirement for the benefit of younger unemployed persons
- **Judgement of 28.6.2018, Case C 2/17, Crespo Rey** → Calculation of pension benefit and equal treatment– migrants at disadvantage
- Judgement of 5.12.2019, Joined Cases C 398/18 and C 428/18, Bocero Torrico → Art. 5(a) Reg. 883/04 precludes legislation of a MS which requires, for an early retirement pension eligibility, that the amount of the pension to be received must be higher than the minimum pension that would be due to that worker upon reaching the statutory retirement age under that legislation, without including the pension which that worker may receive through equivalent benefits payable by one or more other Member States
- **Judgement of 12.3.2020, Case C 769/18, Caisse d'assurance retraite et de la santé au travail d'Alsace-Moselle** → Pension insurance period and disabled child raising period

Old-age benefits: Case 2/17 Crespo Ray

- Crespo Ray, a Spanish national, after paying social security contributions in Spain in accordance with contribution bases higher than the minimum set by the Spanish general social security scheme, he moved to Switzerland and he paid contributions to the Swiss social security system. He then moved back to Spain, where he signed a special agreement with the Spanish social security of 1 December 2007, so that from that date he paid contributions calculated on the minimum contribution basis set by the Spanish general social security scheme.
- The Agreement of free movement of persons (EU-Swiss Confederation) precludes a legislation of a MS which obligates a migrant worker who concludes a special agreement with the social security system of that Member State to make contributions in accordance with the minimum contribution basis,

with the result that the MS takes into consideration, for the purposes of the calculation of the theoretical amount of retirement benefit, only of the contributions paid under that agreement, even though, before exercising his right to free movement, that worker made contributions in accordance with contribution bases higher than the minimum

Old-age benefits: Case 769/18 Caisse d'assurance retraite et de la santé au travail d'Alsace-Moselle

SJ, a French national, residing in Germany, and mother of a disabled child, worked successively in France and Germany receiving a German allowance in respect of assistance for the integration of mentally disabled children and young people

The competent institution did not (while calculating her retirement benefit) treat the disabled child raising periods in Germany as insurance periods and thus without the 'increase in the pension rate' provided for parents who raise a disabled child and are entitled to relevant allowances by the French legislation

→The principle of equal treatment of facts enshrined in Article 5(b) Reg. 883/04 applies but it is for the competent French authorities to ascertain whether, in the present case, it is established that the fact required for the purposes of that provision has occurred. In that connection, those authorities must take into account similar facts occurring in Germany as though they had taken place on their own territory

Sickness benefits

- Judgement of 25.7.2018, Case C 679/16, A (Assistance for a disabled person) → Services provided to people with disabilities being outside the scope of Regulation 883/2004 -Articles 20 and 21 TFEU preclude the home municipality of a resident of a Member State who is severely disabled from refusing to grant that person a benefit, such as the personal assistance, on the ground that he is staying in another Member State in order to pursue his higher education studies there
- Judgement of 5.3.2020, Case C 135/19, Pensionsversicherungsanstalt → The rehabilitation allowance is considered as a sickness benefit under Reg. 883/04
- **Judgement of 23.9.2020, Case C 777/18, Vas Megyei Kormányhivatal** → Absence of an application for authorisation: Regulation 883/2004 and Directive 2011/24
- Judgement of 29.10.2020, Case C 243/19, Veselības ministrija → Cross-border healthcare without prior authorization and the superior criterion of medical assessment-Refusal of authorisation

Sickness benefits: Case C 777/18, Vas Megyei Kormányhivatal

The Court examined the issue of the reimbursement for cross-border healthcare referring to an (urgent) treatment without prior authorization

WO, a Hungarian national, had lost his vision in his left eye. In 2015, WO was diagnosed with glaucoma in his right eye. The treatments in Hungary were not effective and WO contacted a doctor practising in Germany and set up an appointment with that doctor for a medical examination on 17 October 2016. The doctor informed him that he should extend his stay, when, if necessary, eye surgery would be carried out. In the meantime, WO's intra-ocular pressure was assessed during a medical examination in Hungary considerably higher than 21mmHG, above which intra-ocular pressure is regarded as abnormal. On 17 October 2016 in Germany, the doctor practising in that Member State considered that the eye surgery had to be carried out urgently in order to save WO's sight.

Rulings of the Court on Case C 777/18, Vas Megyei Kormányhivatal

- The Court held that it is for the national court to decide if the criteria of Regulation 883/2004 regarding authorization were met, but it provides for an additional criterion to be taken into consideration →

if by reasons relating to his or her state of health or to the need to receive urgent treatment to another member state, the person concerned was in a situation which prevented him or her from applying for such authorization

- A certain guidance to the national judges to be then validated through its interpretation of Directive 2011/24 → precludes such a legislation that does not take into account the abovementioned additional criterion (in essence enforcement of cross-border healthcare but via the Directive 2011/04)
- Highlights the major criterion of the medical state of the person concerned (the right to health), balancing at the same time with the financing requirements of the national social security systems and providing some specific indicators as to the reasonable periods of time for processing requests for cross-border healthcare under Article 9(3) Directive 2011/24

Invalidity benefits

- Judgement of 14.3.2019, Case C 134/18, Vester → invalidity status and entitlement to invalidity benefits --->

The right of a migrant to invalidity benefits being governed consecutively by different legislation hindering the entitlement of the person concerned to invalidity benefits despite the invalidity status having been acquired

- Articles 45 and 48 TFEU preclude a situation, in which a worker who is unfit to work for one year and who has been granted invalidity status by the competent institution of the Member State of his residence, without being entitled to receive invalidity benefits on the basis of the law of that Member State,

is required by the competent institution of the Member State in which he completed all his insurance periods

to complete an additional one-year period of incapacity to work in order to be granted invalidity status and receive pro-rata invalidity benefits, without receiving any benefits for incapacity to work during that period

Family benefits-EU nationals

- Judgement of 14.6.2016, Case C 308/14, European Commission v United Kingdom of Great Britain and Northern Ireland → Lawful residence as a requirement for granting family benefit does not amount to discrimination prohibited under Article 4 of Regulation 883/2004
- Judgement of 7.2.2019, Case C 322/17, Bogatu → eligibility to family benefits regardless of an activity
- Judgement of 18.9.2019, Case C 32/18, Moser → interpretation of Articles 67-68 of Reg. 883/2004 and of the article 60 of Reg.987/09 - the amount of the differential supplement to be granted to a worker under the legislation of a Member State having secondary competence in accordance with Art. 68 Reg. 883/04 must be calculated by reference to the income actually earned by that worker in his Member State of employment

Family benefits-Third country nationals

- Judgement of 21.6.2017, Case C 449/16, Martinez Silva → an Italian family benefit (ANF) was considered as a social security benefit within the meaning of Regulation 883/2004 – Art. 12 of Directive 2011/98 precludes national legislation, under which a third-country national holding a single permit within the meaning of Article 2(c) of that directive cannot receive a social security benefit such as ANF
- Judgement of the Court of 25 November 2020, Case C 302/19, INPS → the Court reclaimed the foregoing-interpreted Article 12(1)(e) of Directive 2011/98 as precluding the legislation of a MS under which, for the purpose of determining entitlement to a social security benefit, family members of the holders of a single permit, who do not reside in the territory of that MS but in a third country are not to be taken into account
- Judgement of 4.9.2019, Case C 473/18, Bundesagentur für Arbeit – Familienkasse Baden-Württemberg West → Currency conversion of child allowance – Decision H3 must be interpreted as meaning that paragraph 2 thereof is applicable when the currency in which child allowance is paid is converted in order to determine the amount of any differential supplement under Art. 68(2) of Reg. 883/2004

Unemployment benefits

- Judgement of 21.3.2018, Case C 551/16, Klein Schiphorst → Interpretation of Article 64(1)(c) Regulation 883/2004 not precluding the refusal of a request to extend the unemployment benefit export period, provided the institution does not consider that refusing that request would lead to an unreasonable result
- Judgement of 23.1.2020, Case C 29/19, Bundesagentur für Arbeit → the Court, reclaiming amongst others the foregoing judgement proceeded with the interpretation of Article 62 (1) and (2) Regulation 883/2004 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 for account to be taken of the salary received by the person concerned in respect of that activity

Special non-contributory benefits

- Judgement of 6.10.2020, Case C 181/19, Jobcenter Krefeld → Article 4 of Reg. 883/2004, read together with Article 3(3) and Article 70(2) Reg. 883/2004, must be interpreted as precluding legislation of a Member State which provides that

a national of another Member State and his or her minor children, all of whom have, in the former Member State, a right of residence based on Article 10 of Regulation No 492/2011 and are there covered by a social security system within the meaning of Article 3(1) of Regulation No 883/2004,

are automatically and in all circumstances excluded from entitlement to special non-contributory cash benefits

Social security contributions

- Judgement of 10.5.2017, Case C 690/15, de Lobkowicz → Exemption of EU officials from the social security contributions of their member state of residence - their financial obligations in matters of social security are governed exclusively by the Protocol and the Staff Regulations of EU
- Judgement of 18.1.2018, Case C 45/17, Jahin → Articles 63 and 65 TFEU do not preclude legislation of a MS, under which a national of that MS who resides in a third country other than an EEA MS or the Swiss Confederation and is affiliated to a social security scheme in that third country is subject, in that MS, to levies on income from assets for the purpose of contributing to the social security scheme established by that MS, whereas an EU national covered by a social security scheme of another MS is exempted therefrom by reason of the principle that the legislation of a single MS only is to apply in matters of social security pursuant to Article 11 of Regulation No 883/2004
- Judgement of 23.1.2019, Case C 272/17, Zyla → Proportionate calculation of the social security component of the tax credit for the purposes of the establishment of social security contributions payable by a worker in conformity with Article 45 TFEU

Applicable legislation

- Judgement of 6.6.2019, Case C 33/18, V → Worker pursuing an activity as an employed person and an activity as a self-employed person in different Member States — Dual affiliation ---> transition from Regulation 1408/71 to Regulation 883/2004 without an obligation of the person concerned to make a request for the purposes of the determination of applicable legislation
- Judgement of 8.5.2019, Case C 631/17, Inspecteur van de Belastingdienst → Employer established in a Member State other than the worker's State of residence - interpretation of Article 11 Reg. 883/2004 with regard to the maintenance of residence in the Member State of origin, so that the applicable legislation is that of the state of residence

Posting of workers

- Judgement of 11.7.2018, Case C 356/15, European Commission v Kingdom of Belgium → Failure of a member state to fulfill the obligations under Art. 11(1), Art. 12(1) and Art. 76(6) of Reg. 883/2004 and under Art. 5 of Reg. 987/2009 - Decision A1 is not a legislative act so that an infringement could be alleged
- Judgement of 25.10.2018, Case C 451/17, 'Walltopia' → Interpretation of Art. 14(1) of Reg. 987/2009, read together with Art. 12(1) of Reg. 883/2004 "just before the start of his employment ... already subject to the legislation of the Member State in which his employer is established" if that employee had his residence in that Member State
- Judgement of 24.1.2019, Case C 477/17, Balandin and others → Rules of applicable legislation are implemented with regard to posted third country nationals who temporarily reside and work in different Member States in the service of an employer established in a Member State, provided that they are legally staying and working in the territory of the Member States

Binding effect of A1 Certificate

- Judgement of the Court of 6 September 2018, Case C 527/16, Alpenrind and others → Art. 5(1) of Reg. 987/2009, read together with Art. 19(2) thereof, mean that an A1 certificate issued by the competent institution of a Member State under Article 12(1) of Reg. 883/2004 is binding

even though the competent authorities of the latter Member State and the Member State in which the activity is carried out have brought the matter before the Administrative Commission which held that certificate was incorrectly issued and should be withdrawn

- Judgement of 14.5.2020, Case C-17/19, Bouygues travaux publics → interpretation of both Reg. 1408/71 and Reg. 883/2004 and their implementing Reg. 574/72 and 987/2009, with regard to the binding effect of posting certificates in the context of a complicated case including various member states - the effect of posting certificates is binding on the courts or tribunals of the latter Member State solely in the area of social security

The 'race to the bottom' effect with regard to social security protection

- Judgement of 16.7.2020, Case C 610/18, AFMB Ltd and Others → The autonomous interpretation of the concept of “an undertaking” – the criterion of the actual performance of the hierarchical relationship between “employer” and personnel” in practice
- Judgement of 3.6.2021, Case C 784/19, ‘TEAM POWER EUROPE’ → The practical importance of the significant part of the activities criterion as a balancing indicator between fair competition and social security coordination –Art. 14(2) of Reg. 987/2009 means that a temporary-work agency established in a Member State must, in order for it to be considered that it ‘normally carries out its activities’, within the meaning of Art. 12(1) of Reg. 883/2004, in that Member State, carry out a significant part of its activities of assigning temporary agency workers for the benefit of user undertakings established and carrying out their activities in the territory of that Member State

Thank you very much

Have a nice summer