



Court of Justice of the European Union

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Advocate General's Opinion in Joined Cases
C-611/10 Waldemar Hudziński v Agentur für Arbeit Wesel - Familienkasse
and C-612/10 Jarosław Wawrzyniak v Agentur für Arbeit
Mönchengladbach - Familienkasse

Press and Information

In Advocate General Mazák's view, EU law does not prevent a Member State from granting child benefits to posted or seasonal workers

However, EU law imposes no obligation to grant such benefits and Member States may exclude or reduce payment of the child allowance when a comparable benefit is paid in another State

Regulation No 1408/71¹, on the application of social security schemes to migrant workers, establishes that, as a general rule, a worker is subject to the legislation of the Member State in which he is employed. However, those who are posted to carry out work in another Member State ('posted workers') or who perform work in another Member State on a temporary basis ('seasonal workers') continue to be subject to the social security legislation of the country where they usually work rather than that of the Member State where they are actually working.

Waldemar Hudziński (C-611/10) and Jarosław Wawrzyniak (C-612/10) reside in Poland and are covered by the Polish social security system. Mr Hudziński, father of two children and a self-employed farmer, worked as a seasonal worker for a horticultural business in Germany from 20 August to 7 December 2007. Mr Wawrzyniak, who has one daughter, worked in Germany as a posted worker from February to December 2006.

German law states that a person who isn't permanently or habitually resident in Germany is entitled to child benefit if he is liable to income tax. However, child allowance is not paid for a child who can receive a comparable child allowance elsewhere. After having asked to be liable to income tax in Germany, both workers requested child allowance of €154 per month per child to be paid in respect of their children for the period during which they worked in Germany.

Both these requests were refused on the grounds that Polish, not German, social security laws were applicable in accordance with the Regulation.

In that context, the Budensfinanzhof (Federal Finance Court, Germany) has decided to ask the Court of Justice whether, even if Germany is not the competent Member State according to Regulation 1408/71 and its legislation is not the legislation applicable, EU law prevents Germany from granting child allowance in these circumstances. Moreover, the Budensfinanzhof asks whether a Member State may exclude or reduce entitlement to family benefits where a comparable benefit may be received in another Member State.

In today's Opinion Advocate General Ján Mazák first of all makes clear that the Regulation aims to ensure that the persons concerned are subject to the social security scheme of only one Member State in order to prevent more than one system of national legislation being applied and thus to avoid the attendant complications.

The Advocate General considers that the Regulation does not determine the law applicable on the basis of which State's social security system is most advantageous to the migrant worker, but by

¹ Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ 1971 L 149, p. 2), in the version resulting from Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p.1), as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005 (OJ 2005 L 117, p.1).

reference to objective factors such as the place of employment or residence. Rather, the Regulation merely draws up a system of coordination, while leaving substantive and procedural differences between the social security systems unaffected. Therefore, there is no guarantee to a worker that extending his activities into more than one Member State or transferring them to another Member State will be neutral as regards social security. Given the disparities between the social security regimes of the various Member States, such an extension or transfer may, or may not, be to the worker's advantage in terms of social security, according to the circumstances.

However, Advocate General Mazák considers that the case-law of the Court of Justice in the matter illustrates that the Regulation must be interpreted in a manner favourable to migrant workers in the sense that **EU law must not have the effect of depriving a Member State, even if it is not the competent State, of the right to grant workers social benefits provided for under its national legislation.**

That being said, however, Advocate General Mazák emphasises that, **in such situations, there is no obligation on a Member State to grant such benefits.** EU Law does not limit the power of the Member States to organise their social security schemes and, in the absence of harmonisation at EU level, it is for the legislation of each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted.

It therefore follows that, as EU law places no obligation on a Member State to grant child allowances in these circumstances, any national laws providing for such benefits to be excluded or reduced cannot be regarded as contrary to EU law.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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