Court of Justice of the European Union
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Press and Information

Judgment 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

EU law does not prevent a Member State from granting family benefits to posted or seasonal workers in respect of whom it is not, in principle, the competent Member State

However, once that power has been exercised, a national rule which excludes those benefits in the case where a comparable benefit has to be paid in another State constitutes an obstacle to the free movement of workers

By virtue of Regulation No 1408/71[1], which relates to the application of social security schemes to migrant workers, workers are, in principle, subject to the legislation of the Member State in which they are employed. However, workers 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 ('temporary workers') continue to be subject to the social security legislation of the country in which they usually work rather than that of the Member State in which they are actually working.

Mr Waldemar Hudziński (C-611/10) and Mr Jarosław Wawrzyniak (C-612/10), who are Polish nationals, reside in Poland and are covered by the Polish social security system. Mr Hudziński, who is the father of two children and a self-employed farmer, was employed as a seasonal worker in 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.

Under German law, a person who is not permanently or habitually resident in Germany is entitled to family benefits if he is subject to unlimited income tax liability in Germany. Family benefits are, however, not payable if similar family benefits can be received in another Member State. After having requested that they be made subject to unlimited income tax liability in Germany, both workers applied for child benefit of €154 per month per child to be paid for the period during which they worked in Germany.

Each of those requests was refused on the ground that Polish law, not German law, had to apply, in accordance with Regulation No 1408/71.

It is in that context that the Bundesfinanzhof (Federal Finance Court, Germany) has asked the Court of Justice whether, in cases where Germany is not the competent Member State according to Regulation No 1408/71 and German legislation is for that reason not applicable, EU law prevents Germany from granting family benefits. The Bundesfinanzhof asks, further, whether a Member State may exclude entitlement to family benefits in the case where similar benefits can be received in another Member State.

The Court points out that EU law seeks to ensure, in particular, that the persons concerned are, in principle, subject to the social security scheme of only one Member State in order to prevent a situation in which more than one system of national legislation is applicable and to avoid the complications which could result from such a situation. Furthermore, each Member State remains

[1] Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971(II), p. 416), 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).

competent to determine in its legislation, and in compliance with EU law, the conditions pursuant to which benefits may be granted under a social security scheme.

The Court takes the view that the fact that Mr Hudziński and Mr Wawrzyniak have neither lost their entitlement to social security benefits nor suffered any reduction in the amount thereof by reason of the fact that they exercised their right of free movement, given that they retained their entitlement to family benefits in Poland, cannot preclude the Member State which lacks competence from having the possibility of granting such benefits.

Moreover, that power cannot be brought into question by the fact that, in the present cases, neither the worker nor the child for whom that benefit is claimed habitually reside within the territory of the Member State in which the temporary work was carried out. In the present cases, the factor connecting the situations of Mr Hudziński and Mr Wawrzyniak with German territory, in which the family benefits are claimed, is the fact of subjection to unlimited income tax liability in respect of the income earned from the temporary work carried out in Germany. Such a connection is based on a precise criterion and may be regarded as being sufficiently close, when account is also taken of the fact that the family benefit claimed is financed by tax revenue.

It would both go beyond the objective of Regulation No 1408/71 and exceed the purpose and scope of the Treaty to interpret that regulation as prohibiting a Member State from granting to workers and members of their family, in cases such as those in the main proceedings, broader social protection than that resulting from the application of that regulation.

From this the Court concludes that **an interpretation of Regulation No 1408/71 permitting a Member State to grant family benefits** in a situation such as that in the main proceedings cannot be excluded because it **is liable to contribute to the improvement of living standards and conditions of employment of migrant workers by affording them greater social protection** than that resulting from application of that regulation. **That interpretation thereby contributes to the objective** of those provisions, which **is to facilitate the free movement of workers**.

In the second part of its judgment, the Court examines the situation in which a Member State makes use of its power to grant family benefits to workers in respect of whom it is not, in principle, competent, while excluding that right in the case where the worker receives a comparable benefit in another Member State. The Court finds that **a rule of national law** against overlapping **– in so far as it appears to require, not a reduction in the amount of the child benefit because of the existence of a comparable benefit received in another State, but exclusion from entitlement to that benefit – is such as to constitute a substantial disadvantage affecting in reality a significantly greater number of migrant workers than settled workers,** this being a matter for the referring court to ascertain.

Such a disadvantage appears even less justifiable in light of the fact that the benefit claimed is financed by tax revenue and that, according to German legislation, Mr Hudziński and Mr Wawrzyniak are entitled to that benefit by reason of the fact that they were subject to unlimited income tax liability in Germany. Consequently, even if it can be explained by the disparities in the social security legislation of the Member States which subsist despite the existence of the coordinating rules laid down by EU law, such a disadvantage is contrary to the requirements of EU law on the free movement of workers.

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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