

Anonymised version

Translation

C-280/20 — 1

Case C-280/20

Request for a preliminary ruling

Date lodged:

25 June 2020

Referring court:

Sofiyski rayonen sad (Bulgaria)

Date of the decision to refer:

27 May 2020

Applicant:

ZN

Defendant:

Generalno konsulstvo (General Consulate) of the Republic of Bulgaria in the City of Valencia, Kingdom of Spain

ORDER

... [...]

Sofia, 27 May 2020

The SOFIYSKI RAYONEN SAD (District Court, Sofia) [...]

[...] took the following matters into consideration in reaching its decision:

1. The procedure is based on the first paragraph of Article 267 TFEU.
2. A person who claims to be a worker has brought proceedings against the Bulgarian Embassy in Valencia, Kingdom of Spain. In dispute is the issue of whether the provisions of Regulation (EU) No 1215/2012 on international

jurisdiction apply to disputes between nationals of a Member State and the consular service of that Member State in the European Union.

1. Parties to the proceedings:

3. 1.1. Applicant:

4. ZN, a Bulgarian national with an address in Sofia

5. [...]

6. 1.2. Defendant:

7. Generalno konsulstvo (General Consulate) of the Republic of Bulgaria in the City of Valencia, Kingdom of Spain

8. [...]

2. Forms of order sought by the parties:

9. The applicant is seeking payment of financial remuneration in respect of unused paid annual leave to which she claims to be entitled under the labour law of the Republic of Bulgaria. She contends that she did not take the 120 days' paid annual leave to which she was entitled in the four years from 2 January 2013 to 31 December 2016 (30 days per year).

10. As her work at the General Consulate in Valencia was carried out under a contract governed by general civil law which was not expressly designated as a contract of employment, the applicant is also seeking judgment finding that she was also party to a contract of employment. She contends that, on the basis of the general principle of Bulgarian procedural law under which anyone demonstrating a legitimate interest can seek judgment finding that a legal relationship exists, she also has a legitimate interest in obtaining a finding to that effect **[Or. 2]**.

3. National law:

11. **3.1.** Kodeks na truda (Bulgarian Employment Code; 'the KT' [...]).

Subject matter and objective

12. **Article 1.** [...] (1) This law governs the employment relationship between a worker and an employer and all directly related legal relations.

13. (2) [...] Legal relations in connection with the provision of work shall be regulated exclusively as an employment relationship.

Paid basic and additional annual leave

14. **Article 155.** [...] (1) [...] Every worker shall be entitled to paid annual leave.
15. (2) [...] A worker who starts a new job may take his paid annual leave as soon as he has been employed for a minimum of eight months.
16. (3) [...] If the employment relationship is terminated before the minimum period of employment of eight months has been completed, the worker shall be entitled to financial remuneration in lieu of unused paid annual leave calculated in accordance with Article 224(1).
17. (4) [...] The minimum basic paid annual leave shall be 20 working days.
18. (5) [...] Certain groups of workers shall be entitled to extended paid annual leave, depending on their particular type of work, which includes the leave referred to in paragraph (4). The Ministerski savet (Council of Ministers) shall specify those groups of workers and their minimum paid annual leave.

Remuneration

19. **Article 177.** (1) [...] The employer shall pay the worker remuneration for the duration of the paid annual leave calculated on the basis of the average daily gross salary paid by that employer in the calendar month preceding the leave in which the worker worked a minimum of 10 working days.
20. (2) [...] If the worker did not work a minimum of 10 working days for that employer in any month, the remuneration referred to in paragraph (1) shall be based on the basic salary agreed in the contract of employment and any permanent additional remuneration for work. **[Or. 3]**

Prohibition of financial remuneration in lieu

21. **Article 178.** The period of paid annual leave may not be replaced by financial remuneration, except where the employment relationship has been terminated.

Financial remuneration in lieu of unused paid annual leave

22. **Article 224.** (1) [...] (the part that reads ‘for the current calendar year in proportion to the time recognised as time worked and for leave not taken and carried forward in accordance with Article 176’ held to be unconstitutional [...]) At the end of the employment relationship, the worker shall be entitled to financial remuneration for paid annual leave not taken for the current calendar year in proportion to the time recognised as time worked and for leave not taken and carried forward in accordance with Article 176, provided that the leave entitlement has not lapsed.
23. (2) [...] The financial remuneration referred to in the preceding paragraph shall be calculated in accordance with Article 177 at the time at which the employment relationship ends.

Definition

24. **Article 357.** (1) [...] ‘Labour dispute’ means a legal dispute between a worker and an employer concerning the accrual, existence, performance and termination of an employment relationship or a legal dispute concerning the application of collective agreements and the determination of working time.

Jurisdiction in respect of labour disputes concerning Bulgarian workers abroad

25. **Article 362.** [...] The courts of Sofia shall have jurisdiction to adjudicate in labour disputes between workers who are Bulgarian nationals working abroad and Bulgarian employers abroad. If the worker is the defendant, the courts in his place of residence in Bulgaria shall have jurisdiction.

Definitions

26. **Paragraph 1.** For the purposes of this Law:
27. 1. [...] ‘Employer’ means any natural person, legal person or entity dependent thereon, together with any other organisationally and economically separate entity (an undertaking, establishment, organisation, cooperative, firm, venue, household, company or suchlike) which independently engages staff in the context of an employment relationship, including staff engaged for the purposes of performing homework or telework and their provision for performance of work within an undertaking using hire staff.
28. **3.2. Grazhdanski protsesualen kodeks (Code of Civil Procedure) ([...]): [Or. 4]**

Types of proceedings

29. **Article 124.** (1) Anyone with a legitimate interest can bring proceedings in order to enforce an infringed right or to obtain judgment finding that a legal relationship or a right does or does not exist.
30. **3.3. Zakon za diplomaticheskata sluzhba (Law on the Diplomatic Service) [...]:**

Representation abroad. Opening and closure

31. **Article 21.** (1) [...] The representation abroad of the Republic of Bulgaria is a territorial structural unit of the Ministerstvo na vanshnite raboti (Ministry of Foreign Affairs) that performs diplomatic and/or consular activities in another State or in international government organisations.
32. (2) Representations abroad are:
33. 1. Embassies;

34. 2. Permanent representations and permanent delegations to international government organisations;
35. 3. General consulates, consulates, vice-consulates and consular agencies;
36. 4. Diplomatic offices and liaison offices;
37. 5. Special missions within the meaning of the Convention on Special Missions adopted on 8 December 1969 [...] by the United Nations General Assembly.
38. (3) Representations abroad shall be opened, classified by type and closed by the Council of Ministers on the recommendation of the Minister na vanshnite raboti (Minister for Foreign Affairs).

Structure and staffing

39. **Article 22.** (1) A representation abroad shall comprise a head, members of the diplomatic staff, members of the administrative and technical staff and members of the service staff within the meaning of the Vienna Convention on Diplomatic Relations done at Vienna on 18 April 1961 [...], the Vienna Convention on Consular Relations done at Vienna on 24 April 1963 [...] and the Convention on Special Missions.
40. (2) Offices may be established in a representation abroad by type, function and staffing.

4. Facts

41. The purpose of the proceedings is to examine the international jurisdiction of the court, which is determined on the basis of the parties' submissions, as set out in the application and in the defence.
42. On 30 April 2019, the applicant, ZN, who is a Bulgarian national, lodged two applications against the General Consulate of the Republic of Bulgaria in Valencia, Spain, in a subjective joinder of claims.
43. She contends that, [Or. 5] in the period from 2 January 2013 to 29 June 2017, she entered into contracts with the General Consulate of the Republic of Bulgaria in Valencia under which she provided personal services at work in connection with the receipt and administration of documents in matters brought before the Consulate by Bulgarian nationals. The applicant argues that, under the Zakon za diplomatcheskata sluzhba (Law on the Diplomatic Service), the representations abroad of the Republic of Bulgaria are not allowed to employ anyone to provide services or exercise activities other than under a contract of employment. She further contends that, in terms of content, the contracts fulfilled the requirements of Bulgarian law applicable to contracts of employment.

44. By her application and supplementary pleadings of 12 June 2019 and 25 July 2019, the applicant contends that she received no financial remuneration for paid annual leave not taken in the four-year period from 2013 to 2016 inclusive, even though her legal relationship should have been regulated as an employment relationship and every worker with a contract of employment is entitled, on termination of the employment relationship, to leave or financial remuneration in lieu of annual leave not taken.
45. The applicant requests, on the basis of the facts submitted, that her legal relationship with the General Consulate in Valencia, Spain, be recognised as an employment relationship and that the Consulate be ordered to pay her financial remuneration of EUR 3 000 for annual leave not taken in that four-year period.
46. The contracts between the applicant and the General Consulate annexed to the application expressly provide that Bulgarian law is to apply in respect of matters not regulated in those contracts.
47. In its defence, the defendant contends that, in this dispute, it is the courts in the applicant's place of work, that is, in the Kingdom of Spain, and not the Bulgarian courts, that have jurisdiction to adjudicate.

5. Connection with EU law and the need for interpretation:

48. A dispute is pending before the court which, under Bulgarian law, has to be classed as an individual labour dispute. Bulgarian law expressly provides that contracts between a Bulgarian employer abroad and a worker who is a Bulgarian national come under the jurisdiction of the Bulgarian courts (Article 362 of the KT).
49. The European Union adopted Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('the Brussels I recast Regulation') for the purpose of determining international jurisdiction in civil matters, including labour disputes. According to Article 1 of the Brussels I recast Regulation, it applies in all civil and commercial matters pending before the courts of the Member States, with the exception of those expressly listed in Article 1(2) of the Regulation. The Brussels I recast Regulation does not provide for **[Or. 6]** any exemptions for disputes involving diplomatic or consular representatives. According to Article 5(1) of the Brussels I recast Regulation, persons domiciled in a Member State may be sued only in the courts of their Member State of domicile or by virtue of the specific jurisdictional rules set out in the Regulation.
50. At the same time, as is apparent from recital (3) thereof, the Brussels I recast Regulation was adopted so that the European Union can 'adopt measures relating to judicial cooperation in civil matters having cross-border implications'. There is no such cross-border implication in the present case. Rather, this dispute is between a Bulgarian worker and a Bulgarian employer, the legal relationship has a

close connection to Bulgaria and the applicant clearly wants her case to be dealt with in a Bulgarian court. Furthermore, the defendant is a branch of a Bulgarian authority and, although it is located in the sovereign territory of another Member State, all its activities concern services to nationals of the Republic of Bulgaria.

51. For those reasons, the referring court has doubts as to whether it has been seised of a dispute with a ‘cross-border implication’ and finds that the Regulation is to be interpreted as meaning that it does not apply to disputes between the nationals of a Member State and its consular representations abroad, even where such an exception is not expressly provided for. Therefore, the provisions of the Regulation require interpretation and the referring court considers it appropriate to seek a preliminary ruling by the Court of Justice on the following

6. Question:

52. Is Article 5(1) of Regulation (EU) No 1215/2012, in conjunction with recital (3) thereof, to be interpreted as meaning that the regulation applies for the purpose of determining the international jurisdiction of the courts of a Member State to adjudicate in a dispute between a worker from that Member State and the consular service of that Member State in the sovereign territory of another Member State, or should those provisions be interpreted as meaning that the national jurisdictional rules of the Member State of which both parties are nationals apply to such a dispute?
53. ... [...] Pursuant to the first paragraph of Article 267 TFEU, the Sofiyski rayonen sad (District Court, Sofia), [...]

MAKES THE FOLLOWING ORDER:

54. The proceedings are **stayed** [...].
55. The following question is referred to the Court of Justice of the European Union for a **preliminary ruling**:
56. Is Article 5(1) of Regulation (EU) No 1215/2012, in conjunction with recital (3) thereof, to be interpreted as meaning that the regulation applies for the purpose of determining the international jurisdiction of the courts of a Member State [**Or. 7**] to adjudicate in a dispute between a worker from that Member State and the consular service of that Member State in the sovereign territory of another Member State, or should those provisions be interpreted as meaning that the national jurisdictional rules of the Member State of which both parties are nationals apply to such a dispute?

[...]