Press and Information

Court of Justice of the European Union

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Judgment in Case C-347/10
A. Salemink v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen

Workers employed on gas-drilling platforms at sea, on the continental shelf adjacent to a Member State, are as a rule subject to EU law

Work carried out on drilling platforms, in the context of the prospecting and/or exploitation of natural resources, is to be regarded as work carried out in the territory of that State for the purposes of applying EU law

Mr Salemink, a Netherlands national, worked, as from 1996, as a nurse and a radiographer, on a gas-drilling platform of Nederlandse Aardolie Maatschappij. That platform is located outside the Netherlands' territorial waters, on the continental shelf adjacent to the Netherlands, approximately 80 km from its coast.

Mr Salemink was resident in the Netherlands, but, on 10 September 2004, moved his residence to Spain. Before he left for Spain, Mr Salemink was covered by compulsory insurance pursuant to Netherlands social security legislation, in accordance with which a person who works outside the Netherlands is not regarded as an employee unless that person resides in the Netherlands and his employer has its place of business or is established in the Netherlands. As a result of his move to Spain, Mr Salemink no longer satisfied that residence condition and, therefore, he was excluded from the compulsory insurance, in particular from insurance against incapacity for work.

After reporting sick on 24 October 2006, on 11 September 2007 Mr Salemink applied for incapacity benefit pursuant to the Netherlands Law on work and income according to capacity for work, as from 24 October 2008.

That application was refused by the Uitvoeringsinstituut werknemersverzekeringen (the Employee Insurance Agency, 'the UWV') because, since his move to Spain, Mr Salemink was no longer compulsorily insured (as from 10 September 2004) and was not eligible for invalidity benefit.

Accordingly, the Rechtbank Amsterdam (Amsterdam District Court) asked the Court of Justice whether EU law precludes an employee, working on a fixed installation on the continental shelf adjacent to a Member State, from being in a position in which he is not compulsorily insured under national legislation in that Member State solely on the ground that he is not resident there but in another Member State.

The Court examined, first of all, whether EU law applied to Mr Salemink's situation. In that connection, it noted that it follows from the international law of the sea[1] that the coastal State exercises sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources. Those rights are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without its express consent. The coastal State has the exclusive right to construct the artificial islands, installations and structures on the continental shelf, to authorise them and to regulate their construction, operation and use. Thus, the coastal State has exclusive jurisdiction over such artificial islands, installations and structures.

[1] The United Nations Convention on the Law of the Sea, signed at Montego Bay (Jamaica) on 10 December 1982, which entered into force on 16 November 1994, was ratified by the Kingdom of the Netherlands on 28 June 1996 and was approved on behalf of the European Community by Council Decision 98/392/EC of 23 March 1998 (OJ 1998 L 179, p. 1).

Since a Member State has sovereignty over the continental shelf adjacent to it – albeit functional and limited sovereignty – work carried out on fixed or floating installations positioned on the continental shelf, in the context of the prospecting and/or exploitation of natural resources, is to be regarded as work carried out in the territory of that State for the purposes of applying EU law.

Since it has been established that EU law is applicable, the Court then examined whether EU law precludes a person in Mr Salemink's situation from being excluded from the compulsory insurance scheme after transferring his residence to Spain.

In that connection, the Court pointed out that it is for the legislation of each Member State to lay down the conditions creating the right or the obligation to become affiliated to a social security scheme or to a particular branch under such a scheme. Although Member States retain the power to organise the conditions of affiliation to their social security schemes, they must none the less, when exercising that power, comply with EU law. First, those conditions may not have the effect of excluding from the scope of national legislation persons to whom that legislation applies pursuant to EU law. Second, the compulsory insurance schemes must be compatible with the provisions on freedom of movement for workers.

EU law[2] expressly provides that a person employed in the territory of one Member State is to be subject to the legislation of that State 'even if he resides in the territory of another Member State'. That law would not be complied with if the residence condition laid down by the legislation of the Member State in whose territory the person is employed for affiliation to the compulsory insurance scheme which it establishes could be relied on against the persons working in the territory of that Member State but residing in another Member State. With regard to those persons, the effect of EU law is to replace the residence condition with a condition based on employment in the territory of the Member State concerned.

Thus, national legislation which states that it is the residence criterion which determines whether or not an employee working on a gas-drilling platform on the continental shelf adjacent to a Member State may benefit from compulsory insurance in that Member State is contrary to EU law.

Moreover, it must be found that such national legislation places non-resident workers, such as Mr Salemink, in a less favourable position than resident workers with regard to their social security cover in the Netherlands, and therefore undermines the principle of freedom of movement secured by EU law.

Consequently, the Court's answer is that that EU law precludes an employee, working on a fixed installation on the continental shelf adjacent to a Member State, from being in a position in which he is not compulsorily insured under national statutory employee insurance in that Member State solely on the ground that he is not resident there but in another Member State.

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 judgment is published on the CURIA website on the day of delivery.

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[2] Article 13(2)(a) of Regulation (EEC) No 1408/71 of the Council 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, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as amended by Council Regulation (EC) No 1606/98 of 29 June 1998 (OJ 1998 L 209, p.1).