

Case C-30/22

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

12 January 2022

Referring court:

Administrativen sad Veliko Tarnovo (Bulgaria)

Date of the decision to refer:

20 December 2021

Applicant in the main proceedings:

DV

Defendant in the main proceedings:

Direktor na Teritorialno podelenie na Natsionalnia osiguriteln institut – Veliko Tarnovo

Subject matter of the main proceedings

Action brought by a Bulgarian national against a decision of the Direktor na Teritorialno podelenie na Natsionalnia osiguriteln institut (Head of the Regional Department of the National Social Security Institute) rejecting her complaint against an order refusing to grant her unemployment benefit.

Subject matter and legal basis of the request

Interpretation of Title III of Part Two of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ('the Agreement')

Third paragraph of Article 267 of the Treaty on the Functioning of the European Union

Questions referred for a preliminary ruling

(1) Must the provision of Article 30(2) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, read in conjunction with Article 30(1)(a) thereof, be interpreted as meaning that the persons referred to in the second provision are covered by the scope *ratione personae* of Article 31(1) of the Agreement if they were nationals of a Member State without interruption throughout the transitional period and were at the same time subject to the legislation of the United Kingdom, or must it be interpreted as meaning that the persons referred to in Article 30(1)(a) of the Agreement are covered by Article 31(1) only for as long as they are employed in the United Kingdom at and/or after the end of the transitional period?

(2) Must the provision of Article 30(2) of the Agreement, read in conjunction with Article 30(1)(c) thereof, be interpreted as meaning that the persons referred to in the second provision are covered by Article 31(1) of the Agreement if they resided as Union citizens in the United Kingdom without interruption throughout the transitional period and were at the same time subject to the legislation of a single Member State throughout the transitional period, until the end of that period, or must it be interpreted as meaning that the persons referred to in Article 30(1)(c) are not covered by Article 31(1) if they ceased to reside in the United Kingdom after the end of the transitional period?

(3) If it follows from the interpretation of the provisions of Article 30(2) of the Agreement, read in conjunction with Article 30(1)(a) and (c) thereof, that those provisions are not applicable to the facts of the main proceedings because a Union citizen ceased to reside in the United Kingdom after the end of the transitional period, must the provisions of Article 30(4) of the Agreement, read in conjunction with Article 30(3) thereof, be interpreted as meaning that persons residing or working in the host State or in the State of employment are no longer covered by the provision of Article 30(1) if their legal relationships as employed persons (workers) have been terminated and, as a result, they have lost their right of residence and have left the State of employment or the host State after the end of the transitional period, or must those provisions be interpreted as meaning that the restriction laid down by Article 30(4) relates to the right of residence and the right of employment exercised after the end of the transitional period, without it being relevant when the rights were terminated, provided that they still existed after the end of the transitional period?

Provisions of EU law and case-law cited

Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community: Article 2(e), Article 30(1)(a) and (c) and Article 30(2) and (3), Article 31(1), first sentence, and (2), Article 32(1)(a)(i), Article 161(1)

Article 2(e): ““transition period” means the period provided in Article 126’.

Article 30(1)(a): ‘This Title shall apply to the following persons: (a) Union citizens who are subject to the legislation of the United Kingdom at the end of the transition period, as well as their family members and survivors;’

Article 30(1)(c): ‘This Title shall apply to the following persons: (c) Union citizens who reside in the United Kingdom and are subject to the legislation of a Member State at the end of the transition period, as well as their family members and survivors;’

Article 30(2): ‘The persons referred to in paragraph 1 shall be covered for as long as they continue without interruption to be in one of the situations set out in that paragraph involving both a Member State and the United Kingdom at the same time.’

Article 30(3): ‘This Title shall also apply to persons who do not, or who no longer, fall within points (a) to (e) of paragraph 1 of this Article but who fall within Article 10 of this Agreement, as well as their family members and survivors.’

Article 31(1), first sentence: ‘The rules and objectives set out in Article 48 TFEU, Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council shall apply to the persons covered by this Title.’

Article 31(2): ‘By way of derogation from Article 9 of this Agreement, for the purposes of this Title, the definitions in Article 1 of Regulation (EC) No 883/2004 shall apply.’

Article 32(1)(a)(i): ‘The following rules shall apply in the following situations to the extent set out in this Article, in so far as they relate to persons not or no longer covered by Article 30: the following persons shall be covered by this Title for the purposes of reliance on and aggregation of periods of insurance, employment, self-employment or residence, including rights and obligations deriving from such periods in accordance with Regulation (EC) No 883/2004: (i) Union citizens, as well as stateless persons and refugees residing in a Member State and nationals of third countries who fulfil the conditions of Regulation (EC) No 859/2003, who have been subject to the legislation of the United Kingdom before the end of the transition period, as well as their family members and survivors;’

Article 161(1): ‘Where a court or tribunal of a Member State refers a question concerning the interpretation of this Agreement to the Court of Justice of the European Union for a preliminary ruling, the decision of the national court or tribunal containing that question shall be notified to the United Kingdom.’

Provisions of national law cited

Kodeks za sotsialното osiguryavane (Social Security Code, Bulgaria), as amended and supplemented on several occasions, in the version published in Darzhaven vestnik (State Gazette; ‘DV’) No 77 of 16 September 2021 (**‘the KSO’**):

Article 54a(1) Persons entitled to unemployment benefit shall be persons in respect of whom compulsory insurance contributions to the ‘Unemployment’ Fund have been paid for at least 12 of the last 18 months prior to the termination of the insurance and who are registered as unemployed with the Employment Agency; who have not acquired entitlement to a pension on the basis of periods of insurance and old age in the Republic of Bulgaria or to an old-age pension in another State, do not receive a pension on the basis of periods of insurance and old age in a reduced amount pursuant to Article 68a or an occupational pension pursuant to Article 168 and do not perform an employment activity which is subject to compulsory insurance under this Code or under the legislation of another State, with the exception of the persons referred to in Article 114a(1) of the Kodeks na truda (Bulgarian Labour Code).

Article 117(1)(2)(b) Complaints concerning the refusal, incorrect calculation, modification or termination of unemployment benefits must be addressed to the head of the competent regional department of the National Social Security Institute.

Article 119 Decisions of administrative courts shall be subject to appeal in cassation in accordance with the provisions of the Administrativnoprotsesualen kodeks (Code of Administrative Procedure, Bulgaria), with the exception of decisions rendered on actions brought against the acts referred to in Article 117(1)(1) and (2), items (b) and (e) – in respect of amounts up to 1 000 leva (BGN) – and items (f) and (g).

Succinct presentation of the facts and procedure in the main proceedings

- 1 It is apparent from the case file that the applicant is a Bulgarian national. She was employed by the following employers established in the United Kingdom: (a) Mimosa Health Care GL from 1 December 2014 to 16 July 2016; (b) Wellburn Care Homes Ltd from 16 July 2016 to 24 December 2018; (c) Lfcal Care Force LLP from 20 September 2018 to 2 February 2020; and (d) NHS YORK Teaching Hospital from 3 February 2020 to 29 March 2021.
- 2 On 2 April 2021, the applicant, as an unemployed person, made an application for unemployment benefit under the national KSO. In her application, the applicant stated that her legal relationship with the employer NHS YORK Teaching Hospital had been terminated on 29 March 2021 because her fixed-term contract of employment had expired. She further stated that she had not acquired entitlement to an old-age pension in another country, in addition to other relevant

circumstances. The document concerning the termination of her employment contract with effect from 29 March 2021 was attached to the application. By order of 5 April 2021, the institution with which the application was made suspended the administrative procedure for granting unemployment benefits under Article 54d(4) of the KSO. It justified this on the ground that it was necessary to provide proof of the specified periods of insurance in respect of the employment in the United Kingdom.

- 3 On the following day, 6 April 2021, the institution sent the applicant a letter requesting that she submit the following three documents: application for a statement by another Member State of periods of insurance and income; form CA3916, in accordance with the requirements of the competent authority in the United Kingdom; and a declaration concerning the determination of residence in connection with the application of Article 65(2) of Regulation (EC) No 883/2004.
- 4 Those documents were submitted together with other documents issued by the last employer by whom the applicant had been employed in the United Kingdom. They substantiate the facts set out in paragraph 1 above. An electronic exchange of social security data was initiated between Bulgaria and the United Kingdom, concerning her social security records and the amount of remuneration that she had received.
- 5 On 16 August 2021, the unemployment insurance institution issued an order re-opening the administrative procedure relating to the applicant's application and stated that the structured electronic document received in the course of the electronic exchange made it possible to establish the periods of insurance in the United Kingdom and the last period, from 3 February 2020 to 29 March 2021 – data that were required for the assessment of entitlement to unemployment benefit.
- 6 On 18 August 2021, the Bulgarian unemployment insurance institution issued an order in which a decision was taken on the application. Citing the provisions of Articles 54g(1) and 54a(1) of the KSO, the institution refused to grant the unemployment benefit applied for. Specifically, it based its decision on the fact that the applicant has periods of insurance in the United Kingdom from 8 December 2014 to 29 March 2021 and no 'Bulgarian' periods of insurance after that point. It stated that Article 30 of the Withdrawal Agreement is not applicable because, in returning to Bulgaria, the applicant had interrupted the cross-border situation that she was in as at 31 December 2020 and, consequently, her situation did not involve both a Member State and the United Kingdom at the same time. It was further stated that, with regard to the acquisition of social security benefit rights, the assessment of which is carried out in application of national law, Article 32 of the Agreement regulates only the aggregation of periods of insurance completed before and after 31 December 2020. The institution stated that, in essence, the applicant did not engage in any employment activity in Bulgaria, the termination of which would make it possible to assess whether she met the

requirements of the Bulgarian law governing entitlement to unemployment benefits.

- 7 On 7 September 2021, the applicant lodged a complaint against that order with the defendant in the main proceedings in accordance with the procedure provided for in the KSO, contending that Article 30 of the Agreement does govern cases such as hers. In her complaint, she argued, *inter alia*, that she is a Union citizen who was subject to the legislation of the United Kingdom at the end of the transition period and that Regulation (EU) No 2019/500 of 25 March 2019 applies. In response to the complaint, the defendant issued the decision that is the subject of the main proceedings.

The essential arguments of the parties in the main proceedings

- 8 The applicant submits, both in her complaint and before the court, that the defendant misinterpreted the Agreement. According to her, Article 30 thereof governs precisely cases such as hers, since, in returning to Bulgaria, a Member State of the European Union, she created a cross-border situation, which is governed by the provisions of the Agreement. She is a Union citizen who was subject to the legislation of the United Kingdom at the end of the transition period. Had she continued to work in the United Kingdom, her situation would not have been cross-border in nature, as both the work performed and her entitlement to unemployment benefit would have been subject to the legislation of the United Kingdom. She stated that it is precisely for that reason that the relevant authorities of the United Kingdom issued the document, attached to her application, establishing the facts and circumstances relevant to unemployment benefits.
- 9 In the contested decision, the defendant stated that, in accordance with Article 54a(2)(4) of the KSO, periods recognised under the law of another Member State must also be recognised as periods of insurance under an international treaty to which Bulgaria is a party or under the European regulations on the coordination of social security systems. Accordingly, it was found that, in principle, Bulgaria must apply Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 (for the sake of brevity, ‘the Regulation’) and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (for the sake of brevity, ‘the Implementing Regulation’). On the basis of that finding, the defendant considered that the conflict-of-law rule of Article 11(3)(a) of the Regulation is applicable in principle, exceptions to which are provided for in Article 65(2). The defendant took the view that, as the United Kingdom is not a Member State as of 31 January 2020, the Agreement applies after the end of the transitional period (after 31 December 2020). With regard to the nature of the right asserted, the scope *ratione personae* is that defined in the provisions of Article 30, whereby six groups of persons are delimited in accordance with the scheme of the provision. The defendant based its decision on the grounds that, if the applicant’s last periods of employment (which

are not in dispute) in the United Kingdom were from 3 February 2020 to 29 March 2021, she would come within the scope of the situation defined in Article 30(1)(c) of the Agreement. However, that provision can be applied only if there is compliance with paragraph 2. The defendant considers that a cross-border situation therefore exists only if a national of a Member State works in another Member State. Since the applicant's employment relationship was terminated on 29 March 2021, the cross-border situation was interrupted as from 30 March 2021, with the result that the applicant is not a person within the meaning of Article 30(1) of the Agreement. Therefore, according to the defendant, the provisions of Article 61 et seq. of the Regulation do not apply to the applicant. On the other hand, Article 32 of the Agreement covers special cases relating to persons who are not or are no longer covered by Article 30(1) of the Agreement. According to the defendant, only the principle of aggregation of periods of insurance, periods of employment and other periods for the purpose of acquiring entitlement to benefits applies to such persons. Consequently, for the purposes of aggregating those periods, the periods completed after the end of the transitional period should be taken into account in accordance with the Regulation, whereby the persons covered are Union citizens or nationals of the United Kingdom who are, in essence, categories of persons who have acquired benefit rights only before 31 December 2020 or before and after that date. For those persons, national law must be applied in the assessment of their rights, by aggregating periods of employment and insurance in the United Kingdom and periods to which national law applies. The defendant takes the view that, since there were no periods of insurance under Bulgarian law, entitlement to unemployment benefit must not be recognised and such benefit must be refused. In fact, having regard to the defendant's letter to the applicant dated 31 August 2021, the defendant declared that it was not competent to recognise and satisfy the applicant's entitlement to benefit.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 10 The facts established in the main proceedings are not in dispute. The facts as described by the referring court are confirmed by the evidence before it. The court has doubts as to the defendant's interpretation of the provisions of the Agreement. Since the referring court is required to rule on the dispute concerning the lawfulness of the contested decision by final judgment, and in view of the unambiguous provision of the third paragraph of Article 267 TFEU, it has no concerns with regard to requesting an interpretation of the relevant provisions of the Agreement. In accordance with Article 161(1) of the Agreement, the Court of Justice of the European Union has jurisdiction to give preliminary rulings on the interpretation of the Agreement.
- 11 The referring court takes the view that the assessment of the lawfulness of the defendant's decision is directly conditioned by the conflict-of-law rules of the Regulation (Articles 61 to 65a) and the more specific rules of the Implementing Regulation (Chapter 5 thereof) and depends on their applicability to the

established facts under Article 31(1) of the Agreement or on the applicability of Article 32 of the Agreement only for the purposes of aggregation of periods, whereby the question as to which institution is competent to recognise the entitlement to benefits must also be included in that assessment.

- 12 In that context, it must first be stated that the referring court has doubts as to the applicability of Article 30(1)(c) of the Agreement to the applicant's legal position. The meaning of that provision, a logical consideration of the provision, and its effect in relation to persons lead to the conclusion that it covers situations in which the following conditions are cumulatively met: (a) a Union citizen residing in the United Kingdom at the time of application of the provision; (b) that Union citizen is not subject to the legislation of the United Kingdom at the end of the transition period, but to the legislation of another Member State; (c) those rules also apply to the family members and survivors of these persons. In the present case, it follows from the facts established that, at least at the end of the transitional period, the applicant was subject to the legislation of the United Kingdom within the meaning of Article 31(2) of the Agreement, read in conjunction with Article 1(1) of the Regulation. In that connection, the referring court takes the view that the applicant is covered by Article 30(1)(a) of the Agreement. That provision requires that two conditions be cumulatively met: (a) the person concerned must be a Union citizen at the time of application of the provision; and (b) that Union citizen must be subject to the legislation of the United Kingdom at the end of the transition period referred to in Article 126. Irrespective of which of the two defined situations determines the applicant's legal position, the defendant clearly interprets them to mean that their applicability depends on the requirements of Article 30(2) of the Agreement. As already stated, the defendant considers what it refers to as a 'cross-border' situation within the meaning of that provision to exist only where the relevant national of a Member State works in another Member State. According to the defendant, if that situation does not exist as a result of the termination of that employment in the United Kingdom, the applicant no longer comes within the group of persons covered by the situations defined in Article 30 of the Agreement, with the result that the reference in Article 31(1) does not apply to her. The referring court has doubts as to that interpretation proposed by the defendant. As already stated, Article 30(2) provides that the persons referred to in paragraph 1 are covered by the scope of the provision for as long as they continue without interruption to be in one of the situations set out in that paragraph involving both a Member State and the United Kingdom at the same time. The term 'for as long as' should not be interpreted as limiting the scope of the provision to the duration of a situation in which the employed person, who is a national of another Member State, works in the United Kingdom. Rather, the spirit and purpose of the provision and its teleological interpretation lead to the conclusion that the persons referred to in Article 30(1)(a) are covered by the scope *ratione personae* of the provision if, throughout the transition period provided for in Article 126 of the Agreement, they are at the same time both Union citizens and subject to the legislation of the United Kingdom, whereby those conditions may not change during that time frame and a

subsequent change to one of the conditions has no effect on the scope *ratione personae* of Article 30(1) of the Agreement.

- 13 However, it appears to be possible that, with the term ‘for as long as’, the provision refers to the time at which it produces its conflict-of-laws effect. This would be the case even if, in line with the view taken by the defendant, the applicant’s legal position were to come within the scope of the condition of Article 30(1)(c) of the Agreement. A literal interpretation and the purpose of the Agreement lead to the conclusion that the persons referred to in point (c) of paragraph 1 are covered by the scope *ratione personae* of the provision throughout the transitional period of application of the Agreement if they are and remain Union citizens who reside in the United Kingdom and are at the same time subject to the legislation of only one Member State throughout the transitional period. However, it is possible to interpret the provision as meaning that the term ‘for as long as’ requires that the scope *ratione personae* of Article 31(1) should apply only up to the point at which the conditions set out in point (c) of paragraph 1 are cumulatively met, that is to say, while the person is a Union citizen who resides in the United Kingdom as an employed person and is at the same time subject to the legislation of a Member State. For the foregoing reasons, the referring court takes the view that the Court of Justice of the European Union can give a useful interpretation of the provisions of Article 30(1)(a) and (c) of the Agreement, in conjunction with Article 30(2) thereof.
- 14 In addition to the considerations already set out above, the referring court is also required to interpret Article 30(3) and (4) of the Agreement with a view to the possible applicability of those provisions to the facts established in the main proceedings. It should be noted that the defendant has not commented on their hypothetical and/or exclusive applicability, despite their subsidiary nature. Article 30(3) of the Agreement provides that, even if a person does not fall within points (a) to (e) of paragraph 1, the Agreement applies to him or her if he or she falls within Article 10 (in the present case, point (a) of paragraph 1 appears to be relevant in view of the facts of the case). According to Article 30(4), the persons referred to in paragraph 3 are covered for as long as they continue to have a right to reside in the host State under Article 13 of the Agreement, or a right to work under Article 24 or 25 of the Agreement. Accordingly, in the event that Article 30(3) of the Agreement is applicable, an interpretation of the scope of that provision in conjunction also with paragraph 4 would be useful for the referring court. At first glance, the spirit and purpose would suggest that once the legal relationship of the employed person (worker) in the United Kingdom has been terminated and that person (Union citizen) has left the United Kingdom, Article 30(3) of the Agreement no longer applies to him or her, since, having regard to the condition of paragraph 4, he or she has lost his or her right of residence in the Member State, because the sole reason for residence in that Member State was the work performed there. However, it might also be argued that the limitation of paragraph 4 relates to the right of residence and the right to work exercised after the end of the transitional period, irrespective of how long those rights were exercised or use was made of them, because the person in any

event continued to be employed and entitled to reside in the host State for a certain period after the end of the transitional period and is covered by Article 31(1) for that period. For those reasons, the Court's guidance to the referring court on the interpretation of the provisions cited would be useful for the purposes of the correct resolution of the case.

- 15 Lastly, it should also be noted that account must be taken of the fact that, due to the applicant's lack of a replacement income which could compensate for the loss of the income from work which she obtained from her employment as an employee in the United Kingdom, and in view of the possible need to claim entitlement to benefits in the United Kingdom within the time limit and in accordance with the conditions laid down in the law of that State, the referring court is obliged to ask the President of the Court to have the preliminary ruling procedure conducted in accordance with the rules laid down in Article 105 of the Rules of Procedure of the Court of Justice.