

SUMMARY

ECJ 7 June 2012, case C-106/11 (M.J. Bakker - v - Minister van Financiën), Free movement, Social insurance

Facts

In 2004 Mr Bakker, a Dutch national, lived in Spain and was employed by a Dutch company for whom he worked outside the EU on board a dredging vessel that carried the Dutch flag. Under Dutch law he was not insured compulsorily for social insurance, because the Dutch social insurance legislation applies only to residents of The Netherlands and non-residents who work there. Nevertheless, the Dutch authorities took the position that Mr Bakker was compulsorily insured and therefore owed contributions. This position was based on Regulation 1408/71. Article 2(1) of this Regulation provides that it applies to “employed persons” who are subject to the legislation of one or more Member States and Article 13(2)(c) provides that a person employed on board a vessel flying the flag of a Member State shall be subject to the legislation of that State.

National proceedings

Mr Bakker challenged the assessment sent to him in respect of national insurance contributions but lost his case in two instances. He brought the case to the Supreme Court. This court noted that the definition of “employed person” in Article 1(a) of Regulation 1408/71 requires the interested party to be insured, compulsorily or on an optional basis, for one or more of the contingencies referred to in that provision (disability, old age, etc.). The Supreme Court queried whether it is possible for someone in Mr Bakker’s situation, who, in the light solely of national legislation, is not compulsorily insured because he does not reside in The Netherlands, to nonetheless have the status of an “employed person” within the meaning of Regulation 1408/71.

ECJ's findings

1. The ECJ rejects Mr Bakker's arguments (i) that a dredging vessel moored off a coast is covered by the concept of "vessel" in Article 13(2)(c) and (ii) that pursuant to the UN Convention on the Law of the Sea, work carried out on board a dredger comes under the jurisdiction of the relevant coastal State and not under that of the flag Member State (§ 24-30).
2. The effect of Article 13(2)(c) is that a provision of the applicable national legislation pursuant to which cover by the social security scheme established by that legislation is conditional on residence in the Member State concerned, may not be relied on against the persons referred to in Article 13(2)(c) (§ 31-35).

Ruling

Article 13(2)(c) of Regulation 1408/71 [...] must be interpreted as precluding a legislative measure of a Member State from excluding from affiliation to the social security scheme of that Member State, a person [...] who holds that Member State's nationality but does not reside in it and is employed on board a dredger flying the flag of that Member State and operating outside the territory of the European Union.

Creator: European Court of Justice (ECJ)

Verdict at: 2012-06-07

Case number: C-106/11