

SUMMARY

ECJ 2 March 2023, joined cases C-410/21 and C-661/21 (DRV Intertrans), Social Insurance

FU, DRV Intertrans BV, PN, Verbraeken J. En Zonen BV, in criminal proceedings, Belgian case

Summary

A1-certificates are binding even if they are suspended, but the court of the 'host' Member State may still set them aside if (i) the issuing institution does not cooperate with the procedure of dialogue and reconciliation, and (ii) the right to a fair trial is still guaranteed. The fact that a company holds a Community licence for road transport does not constitute irrefutable evidence in determining which Member States' social security legislation applies.

Questions

Must, first, whether Article 5 of Regulation No 987/2009 must be interpreted as meaning that an A1 certificate issued by the competent institution of a Member State ceases to bind the institutions and courts of the Member State in which the work is carried out where, following a request for review and withdrawal sent by the competent institution of that latter Member State to the issuing institution, that institution has declared that it has suspended the binding effects of that certificate until such time as it decides definitively on that request. If that first question is answered in the negative, the referring court then asks whether, in such circumstances, a court of the Member State in which the work is carried out, hearing criminal proceedings brought against persons suspected of having fraudulently obtained or used that same A1 certificate, may nevertheless find that there has been fraud and consequently disregard that certificate?

Must Article 13(1)(b)(i) of Regulation No 883/2004, read in the light of Article 3(1)(a) and Article 11(1) of Regulation No 1071/2009, and Article 4(1)(a) of Regulation No 1072/2009, be

interpreted as meaning that the fact that a company holds a Community licence for road transport issued by the competent authorities of a Member State constitutes irrefutable evidence of that company's registered office in that Member State for the purpose of determining, in accordance with Article 13(1)(b)(i) of Regulation No 883/2004, which national legislation on social security is applicable?

Ruling

Article 5 of 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 on the coordination of social security systems, as amended by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012, must be interpreted as meaning that an A1 certificate issued by the competent institution of a Member State is binding upon the institutions and courts of the Member State in which the work is carried out, including where, following a request for reconsideration and withdrawal sent by the competent institution of that latter Member State to the issuing institution, that institution has declared that it has provisionally suspended the binding effects of that certificate until such time as it decides definitively on that request. However, in such circumstances, a court of the Member State in which the work is carried out, seised in the context of criminal proceedings brought against persons suspected of having fraudulently obtained or used the same A1 certificate, may find that there has been fraud and consequently disregard that certificate, for the purposes of those criminal proceedings, provided that, first, a reasonable period has elapsed without the issuing institution having reconsidered the grounds for issuing that certificate and having adopted a decision on the specific evidence submitted by the competent institution in the host Member State, which gave rise to the view that that certificate had been obtained or invoked fraudulently, as the case may be, by cancelling or withdrawing the certificate in question and, second, that the guarantees inherent in the right to a fair trial which must be afforded to those persons have been respected.

Article 13(1)(b)(i) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation No 465/2012, read in the light of Article 3(1)(a) and Article 11(1) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC, and of Article 4(1)(a) of Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules for access to the international road haulage market, must be interpreted as meaning that the fact that a company holds a Community licence for road

transport issued by the competent authorities of a Member State does not constitute irrefutable proof that that company's registered office is in that Member State for the purpose of determining, in accordance with Article 13(1)(b)(i) of Regulation No 883/2004, as amended by Regulation No 465/2012, which national legislation on social security is applicable.

Creator: European Court of Justice (ECJ)

Verdict at: 2023-03-02

Case number: C-410/21 and C-661/21