

SUMMARY

ECJ 13 July 2017, case C-89/16 (Szoja), Social security

<p>Marginal activities should be disregarded for the purposes of determining which national social security legislation applies.</p>

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Facts

Mr Szoja is a Polish national is self-employed in Poland and employed Slovakia, where he has been registered on the national register of insured persons since 1 February 2013. In early 2013, the Polish social insurance institution (Zakład Ubezpieczeń Społecznych) decided that, since Mr Szoja has a residence in Poland where he was also self-employed, his insurance should be covered by Polish social security law. This decision was based on the marginal nature of the activity pursued by Mr Szoja in Slovakia and was also communicated to the Slovak social insurance fund. The Slovak social insurance scheme did not challenge the Polish provisional determination of the applicable law and so it became definitive for the purposes of Article 16(3) of the Implementing Regulation. The Slovak social insurance scheme decided that from 1 February 2013, Mr Szoja was not covered by compulsory health insurance, pension insurance or unemployment benefit insurance with his Slovakian employer. Mr Szoja appealed to the Slovak courts.

National proceedings

According to the Supreme Court of the Slovak Republic (Najvyšší súd Slovenskej republiky), the Polish social insurance institution had examined Mr Szoja's situation on the basis of Article 14(5)(b) of the Implementing Regulation,

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 (OJ 2009 L 284, p. 1), as amended by Regulation No 465/2012.

Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1), as amended by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012 (OJ 2012 L 149, p. 4).

Question put to the ECJ

Must Article 13(3) of the Basic Regulation be interpreted as meaning that, in determining the national legislation applicable by virtue of that provision to a person who is both employed and self-employed in different Member States, the requirements laid down in Articles 14(5b) and 16 of the Implementing Regulation must be taken into account?

The ECJ reformulated the question referred to it. There was also a second and third question referred to the ECJ, which will not be mentioned as the Court found that there was no need to answer the second question, and that the third was inadmissible.

ECJ's findings

As is clear from recitals 1 and 45 of the Basic Regulation, that regulation aims to coordinate the national social security systems of the Member States in order to guarantee that the right to free movement of persons can be exercised effectively and, thereby, contribute towards improving their standard of living and conditions of employment within the EU. Article 11(1) of the Basic Regulation lays down the principle of a single applicable law, pursuant to which those to whom that law applies are subject to the law of a single Member State. That principle also aims to avoid the complications that could arise from the simultaneous application of several national laws and to eliminate unequal treatment which, for employed and self-employed workers moving within the EU, would arise if the law of different Member States overlapped (see, to that effect, Piatkowski, C-493/04).

Article 13(3) of the Basic Regulation provides that, in determining the law applicable to someone who is employed in one Member State and self-employed in another, the law of the Member State in which he is employed applies. (Thus, in the case at hand, as Mr Szoja was employed in Slovakia, that would suggest he should be covered by Slovak law.)

However, by Article 14(5b) of the Basic Regulation, marginal activities should be disregarded for the purposes of determining the applicable law under Article 13. (Thus, as the activity

pursued by Mr Szoja in Slovakia was marginal, this would suggest Polish law might apply.)

Further, it followed from Article 14(5b) of the Implementing Regulation that Article 16 of that regulation applies to all the situations laid down in Article 14. Article 16 indicates the procedure to follow in order to determine the law applicable under Article 13 of the Basic Regulation, and must be taken into consideration.

Ruling

Article 13(3) of Regulation (EC) No 883/2004, as amended by Regulation (EU) No 465/2012, must be interpreted as meaning that, in order to determine the national legislation applicable under that provision to a person, such as the applicant in the main proceedings, who normally pursues an activity as an employed person and an activity as a self-employed person in different Member States, the requirements laid down in Article 14(5b) and Article 16 of Regulation (EC) No 987/2009, as amended by Regulation No 465/2012, must be taken into account.

Creator: European Court of Justice (ECJ)

Verdict at: 2017-07-13

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