Application of provisions on the free movement of workers and social security coordination rules by national courts

Stosowanie przepisów dotyczących swobody przepływu pracowników i koordynacji systemów zabezpieczenia społecznego przez sądy krajowe

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Summary: *The article is based on the legal report on the application of free movement of workers and social security coordination rules by national courts, prepared by MoveS (network of legal experts) in 2019 for the European Commission. It is the first European publication on issues dealt with by national courts in the field of freedom of movement of workers and coordination of social security. The report highlights common definition and conceptual problems, but also takes into account the diversity of these issues in EU Member States.*
Key words: *free movement of workers, social security coordination, national courts, European Union*

Streszczenie: *Artykuł został przygotowany na podstawie raportu prawnego dotyczącego stosowania zasad swobodnego przepływu pracowników i koordynacji systemów zabezpieczenia społecznego przez sądy krajowe w krajach członkowski Unii Europejskiej, opracowanego w projekcie MoveS w 2019 r. dla Komisji Europejskiej (Legal report 2019. The application of free movement of workers and social security coordination rules by national courts). Jest to pierwsza publikacja dotycząca tego, jakie zagadnienia z zakresu swobody przepływu pracowników i koordynacji systemów zabezpieczenia społecznego stają do orzekania przed sądami krajowymi na tle stosowania przepisów unijnych. Zagadnienia te pokazują wiele wspólnych problemów definicyjnych i pojęciowych, ale także uwzględniają różnorodność tych spraw w poszczególnych państwach członkowskich UE.*
Słowa kluczowe: *swoboda przepływu pracowników, koordynacja systemów zabezpieczenia społecznego, sądy krajowe, Unia Europejska*

Introduction

The network of legal experts MoveS („Free Movement of Workers and Social Security Coordination") has conducted a review of national courts' case law on free movement of workers and social security coordination in ten EU Member States (Belgium, Finland, France, Germany, Hungary, Italy, Latvia, Netherlands, Poland, Spain).

The final report from this study was prepared under the direction of Dolores Carrascosa Bermejo from Spain and Jean-Philippe Lhernould from France. The national experts, including Polish national expert, Gertruda Uścińska conducted legal analyses concerning national courts' case law on free movement of workers (FMW) and social security coordination (SSC) in their respective Member States[1].

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[1] D. Carrascosa Bermejo, J.-Ph. Lhernould, *Legal Report 2019. The application of free movement of workers and social security coordination rules by national courts* (Brussels: European Commission, 2019).

The conducted review was not aimed at examining the compliance of national law or the application of judgments of the Court of Justice of the European Union (CJEU) in the national law. Their aim of the study was to understand how national courts deal with cases covered by the provisions and jurisprudence of the CJEU in the field of FMW and SSC. The article presents some of the cases that have been decided by national courts and the results of these studies.

The study concerned the following issues (both FMW and SSC): 1) What legal issues were raised by the courts in 2010–2019 and were they recurring? 2) Has any national judgment repealed any provision of national law on the premise that it was found to be in breach with the EU law? 3) Was the preliminary proceeding justified / questionable / unnecessary? 4) Was the application of EU law or the case law of the Court of Justice of the EU at national level an easy, difficult or controversial task? What were the difficulties and controversies?

For FMW the research was limited to the following subject areas:

1) Concept of worker;
2) Concept of worker's family member;
3) Worker's and family members' right to stay (legal residence);
4) Direct discriminations on grounds of nationality;
5) Indirect discrimination (and obstacle to free movement of workers);
6) Access to work, including restrictions to employment in the public service;
7) Working conditions;
8) Access to social advantages
9) Cross-border jobseeker's status and right to stay for job search purposes.

For SSC the research was limited to the following subject areas: 1) Applicable legislation; 2) Old-age benefits; 3) Unemployment benefits; 4) Family benefits.

Analysis of the main problems being resolved by national courts against the background of the application of EU legislation

Free movement of workers

Personal scope: the concept of worker and worker's family member, as well as their right to stay (legal residence)

National courts case-law focuses on the definition of a worker. As national reports confirm, beyond the classification of a worker the real issue is the right to stay and the entitlement (under the principle of equality of treatment) to social benefits.

In particular, national courts have been asked if marginally employed persons are "workers" within the meaning of Article 45 of the Treaty on the Functioning of the European Union[2] – TFUE (e.g. in Germany). This question is raised in different circumstances, with regard to:

- the EU-Turkey Association Agreement (Germany),
- persons who for many years receive an average monthly wage of € 200–300 (Germany),
- persons who work three and a half hours per week and who get board and lodging by social assistance (Germany),
- persons who work between six and ten hours per week for a limited duration (Germany).
- homeless persons who sell magazines. This person is not classified as an employee since there is no employment relationship with the association (no remuneration, no enforceable obligations, no direction; Germany). On the contrary, a person who works in the framework of a programme aiming to foster insertion of unemployed workers into the workforce is a worker under the meaning of Directive 2004/38/EC[3].

[2] Consolidated Version of the Treaty on the Functioning of the European Union, Official Journal of the European Union C 326/49 of 26.10.2012.

[3] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), OJ L 158, 30.4.2004, p. 77–123.

The national court insisting on the extensive conception of the notion of worker developed by the Court of Justice of the European Union (CJEU) and on the necessity for the administration to take it into account in its assessment of the situation (France).

The status of students is also an interesting subject of disputes before courts. Is a doctoral student with a scholarship contract (including occasional performances such as group meetings) a "worker" within the meaning of Article 45 TFEU?

The answer from one national court was negative: since the receipt of a scholarship is not subject to social security payments or taxes, there is no personal subordination link and no obligations linked to and typical for scholarships (Germany).

In other cases, the status of a student exercising a side job was debated: the student arrived in Finland in order to study and was therefore not granted a student aid pursuant to the national legislation. However, s/he had also started to work and therefore studying was not his/her only ground to stay in Finland. The national court ruled that the student should be granted the study aid (if the other conditions for granting the benefit are fulfilled) because s/he is considered to be a worker (Finland).

The Dutch report points out several cases of that kind. For instance, 56 hours can be regarded as satisfying the requirement of effective and genuine work. On the contrary, a student who mainly pursues his professional activity in the country of origin was not considered a worker. The Dutch report also refers to a case where an intern was reclassified as a worker.

The status of family member is brought before national courts for various motives. If the classification of family member is raised, which rarely happens[4], it is mainly the family members' right to stay which leads to domestic cases, in particular when they are third-country citizens. For instance, a mother's right to stay has been affirmed because of the forthcoming birth of her child (Germany). It has also been ruled that the right to stay for family members does not require that they live in the same household as the person who is directly entitled to the freedom of movement (Germany). A third-country national spouse's right to stay does not depend on living together with the spouse: it is sufficient that the Union citizen resides in the host Member State (Germany).

The application for a residence card of a third-country family member of a Spanish citizen was denied due to a lack of evidence of compliance with the sufficient economic means requirement, as established in Article 7 of Royal Decree 240/2007[5] and Directive 2004/38/EC, the matter of the application of this Directive in this context being subject to further discussions before national courts (Spain).

Direct and indirect discrimination and obstacles to free movement

The authors of the review have shown that there are many subjects of dispute, mainly in the field of social benefits understood in the *sense lato* as: social housing, social aid, and access to care and to social security benefits/insurance.

Some cases expressly deal with the application of the **principle of non-discrimination**. For instance, it was held that a BE public social action centre cannot decline to grant social aid to non-Belgian EU workers and their family members during the first 3 months of their stay and to grant maintenance aid until they obtain a permanent residence, since this is an unlawful discrimination (Belgium).

Direct discrimination can still be brought before national courts. A court held that a real estate tax subject to a different rate for non-Latvian citizens was discriminatory on the

[4] See, however, the original German case where the court was asked to determine whether a pregnant lady can qualify as a family member of a "not yet born child".

[5] Royal Decree – 240-2007 – dated 16th February 2007, Available in: http://carvajal-spain.com/Spain%20Residence 20Law%202007.pdf [Accessed 12.05.2020].

grounds of nationality (Latvia). **Indirect discrimination**, on the other hand, is a source of problems in accessing the labour market, work-related and non-work related social advantages, as well as, for example, professional sport.

The category of social advantages, which covers work-related and non-work-related advantages, is sometimes brought before national courts. It was ruled that German law which makes the right to alimony advances for children dependent on the permanent residence of the children in Germany is not in line with Article 7(2) of Regulation (EEC) No 1612/68[6]. The residence requirement was held as going beyond what is necessary to attain its objectives, for it would be sufficient to make the receipt of alimony advances dependent on having worked in Germany for more than a negligible extent since this reflects sufficient integration of the parent and the children into German society (Germany).

The fact that a housing subsidy is qualified as a social advantage entails that a document issued by another MS stating that the person does not own any property with a certified translation into Hungarian must be granted the same effect as an equivalent document issued by Hungarian authorities. Disregarding the document issued abroad and translated into Hungarian is an indirect discrimination (Hungary).

Another question was whether a Dutch national can rely on Article 7(2) of Regulation (EU) No 492/2011[7] to claim compensation for costs of adoption of his child who has joined the Thai mother to Germany. It was ruled that this is not possible, because the Dutch law concerned only provides compensation in the case of adoption, not in the event that a child joins its mother to an EU MS (Netherlands).

The following interesting question was also raised: can Article 7(2) be relied upon to challenge a national rule that prescribes a lowering of old-age pension for periods of residence abroad? (Netherlands).

Concerning **obstacles to the free movement of workers**, the following cases are worth being highlighted. It was considered a violation of Article 45 TFEU that persons are excluded from the entitlement to a retirement pension under the civil servants' scheme when leaving the civil service and taking up a position in another MS (Germany). On the contrary, the BE legal requirement to show willingness to learn Dutch in view of being eligible to access social housing was not considered contrary to the freedom of movement for workers (Belgium). However, a Community of a federal MS cannot adopt provisions which allow only persons residing in its territory as well as EU nationals employed in that territory and residing in another MS to be insured under and covered by a social security scheme, since this limitation affects nationals of other MSs or nationals of the MS concerned who have made use of their right to freedom of movement within the European Union (Belgium).

Does Article 45 TFEU preclude a Dutch rule that does not allow Dutch nationals returning to the Netherlands to participate in voluntary old-age insurance? The answer is no: while such a rule may constitute indirect nationality discrimination or an obstacle to free movement, it can be justified by the need to ensure solidarity in the system and to avoid 'calculating behaviour' of the persons concerned (Netherlands).

Work relationships: access to work and working conditions

A large number of national court rulings related to the application of EU law concern labour relations in a broad sense. One main issue is the access to work by EU citizens. The subject of disputes spans:

– jobs reserved to nationals,
– access to jobs in the public sector,

[6] Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, OJ L 257, 19.10.1968, p. 2–12.

[7] Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (Text with EEA relevance), OJ L 141, 27.5.2011, p. 1–12.

– language requirements to have access to certain jobs,
– the recognition of diplomas.

It is worth pointing out some examples. According to Latvian regulation a person employed or working in a particular profession or post must possess a particular level knowledge of the official language (Latvian) and use it: a citizen of another EU MS who was appointed by the municipality had been imposed an administrative fine by the State Language Inspection for not possessing the knowledge of the Latvian language and refusing to use it in the daily work at the municipality. The court rejected the claim submitted by the citizen contesting the administrative fine as ungrounded and claiming full compliance with national legal requirements on the use of the official language. It must be underlined that the court did not assess the compatibility of the situation from the perspective of EU law, although the applicant raised the argument that s/he was discriminated against as an EU citizen (Latvia).

Concerning the access to **regulated professional activities**, several cases were cited. For instance, according to a French court, the fact that a lawyer has acquired experience at the European Commission and not in the French administration justifies that he cannot become a lawyer in France[8] (France). Access to the profession of specialised nurse is not entirely free: a French court considered that there is no violation of Directive 2005/36/EC[9], which does not require the automatic recognition of the titles of specialised nurses (France).

Also an access to employment in the public service remains problematic. For instance, a court considered that the employment as tax inspector in the French tax administration is not open to EU nationals from other Member States (France).

Another interesting case dealt with a Spanish national who was a civil servant in a hospital in France and who wanted to take part in a Spanish public procedure selecting officers for the national police force. The national court ruled that there is **no automatic recognition of the condition of civil servant** at an EU level and that EU law does not recognise civil servants a right to access directly public service positions in other Member States. The court held that due to the fact that this person is a Spanish national, EU Law preventing discrimination of nationals of an EU MS does not apply in this case (Spain).

Concerning diploma recognition, a domestic court dismissed the appeal of the Spanish Official Association of Nurses, which claimed that the professional skills and training requirements of general care nurses could not be regulated by a Directive (Spain).

The Dutch citizen, on the other hand, who had the qualification required for obtaining an authorisation to practice as a lawyer in Netherlands (a degree and a master's degree in law) but who did not have an authorisation to practice as a lawyer in Netherlands was not authorised to work as a lawyer in Spain. The national court established that in order for an European Union or European Economic Area national to practice as a lawyer in Spain, it is not sufficient to have the required qualification in the MS of origin; it is also required to have an equivalent authorisation in the said MS, as established in Article 13 of Directive 2005/36/EC. Therefore, this person must either obtain an authorisation in Spain or in another MS in order to practice as a lawyer in Spain (Spain).

Concerning working conditions, a subject of dispute is the status of public servants having gained experience in another MS. It is recalled that teachers are not employed in the public service within the meaning of Article 45 (4) TFEU (Germany).

Jobseekers' status

Compared to the abundant CJEU case law on jobseekers, national case law remains sparse (for an overview, see table 12 below). Only

[8] On the same issue a preliminary question is pending (case C-218/19).
[9] Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (Text with EEA relevance), OJ L 255, 30.9.2005, p. 22–142.

few cases have been brought before national courts, principally about the right to stay and entitlement to social benefits. It is surprising that these cases are usually considered easy in terms of resolution, despite the complication of the applied rules.

The right to **register as a jobseeker** lead to an original case. It was ruled that Bulgarian nationals could not register as a jobseeker and rely on Articles 1 and 5 of Regulation (EEC) No 1612/68 during the transitional period following accession, since those provisions were not applicable during that period. Therefore, a work permit was still required (Netherlands).

It was also examined whether a person can retain his or her status as an employee after **loss of employment**? The answer requires the competent authorities to sufficiently check whether the person concerned did look for new employment (Netherlands).

There is not much case law concerning mobile jobseekers should not be interpreted as meaning that cross-border jobseekers' rights are well protected. The complexity of EU law in this field and the variety of rules at national level[10] together with the lack of disputes brought before national courts (jobseekers are in a weak situation to go to court without trade unions' or NGOs' support) probably hide reality.

Social security coordination

Applicable legislation

The main topics of dispute before the national courts regarding the applicable legislation are **posting** (Article 12 of Regulation (EC) No 883/2004[11]) and **working in two or more MSs** (Article 13 of Regulation (EC) No 883/2004) (see table 13 below). Posting of workers is a topical subject in Europe, both regarding the probative value and validity of A1 forms, and regarding the existence of letterbox companies that try to take advantage of free movement in order to pay less social security contributions. In the case of persons who work in more than one MS, in some cases it is not always easy to identify the MS of residence, while in other cases the work performed in one of the MS is considered a marginal activity.

In five out of the ten MS analysed, judgments deal with the **validity and/or probative value of A1 forms**. In some cases, questions arose on whether the A1 forms have a binding effect regarding certain labour law requirements (France, Germany). There is even a pending preliminary ruling on the topic requested by a French court (C-17/19 *Bouygues travaux publics*[12] and others).

Some MSs' public administrations have challenged the validity of A1 forms issued in other MSs due to fraud or due to how and where the work is performed, but in general the courts have sustained the validity of foreign A1 forms for social security matters, without questioning that they could be disregarded within the framework of a possible criminal offence judgment (Belgium, France).

Questions about what happens when there is no A1 form, or when the form is retroactively issued, have also been brought before court (France, Spain). And in some cases, questions were raised on whether it is possible to prove posting by any other means different from the A1 form or whether providing the A1 is mandatory when the person is working in two MSs[13] (France).

Posting has also been problematic in the MS of origin (Spain, Poland), regarding possible fraud by means of **letterbox companies**,

[10] See e.g. J.-Ph. Lhernould (ed.), E. Eichenhofer, N. Rennuy, F. Van Overmeiren, F. Wollenschläger, *Assessment of the impact of amendments to the EU social security coordination rules to clarify its relationship with Directive 2004/38/EC as regards economic inactive persons. Analytical Report 2015*, FreSsco (Brussels: European Commission, 2015).

[11] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland), OJ L 166, 30.4.2004, p. 1.

[12] Judgment of the Court (Fifth Chamber) of 14 May 2020 in Case C-17/19 Bouygues travaux publics, Elco construct Bucarest, Welbond armatures, ECLI:EU:C:2020:379.

[13] This isn't a posting case.

i.e. companies that commit fraud in the posting of workers. In the event of such fraud insurance under the social security of the MS of origin and the subsequent A1 form are considered void. Some cases follow an inspection by the labour inspectorate and question whether the company has any relevant activity in the MS of origin, once the workers are already posted. In Poland, the administration and the courts often apply the requirements laid down in the Commission's practical guide on applicable legislation.

Other cases were the result of a claim by the posting company when the social security administration of the MS of origin refused to issue the A1 form.

Yet other cases dealt with the consequences of the fraud committed by the letterbox company, i.e. the third-country worker losing his/her authorisation to work, and the loss of the contributions paid by the posting letterbox company (Spain). The question is whether the fraud should affect the weakest link, i.e. the worker, as it is not at all guaranteed that s/he will be insured in the MS of work.

Finally, there have been judgments regarding the fulfilment of the previous insurance requirements of employees hired in order to be posted (Article 14(1) of Regulation (EC) No 987/2009[14]) (Spain).

Old-age benefits

Most national experts list judgments deal with the entitlement or calculation of **old-age pensions** under the coordination Regulations. One reason for this may be that pensions are lifetime benefits, so beneficiaries are more likely to litigate for their rights.

Cases regarding the **entitlement to an old-age pension** are quite diverse, as they deal with the particularities of each Member State's social security system. For example, there were cases regarding the possible aggregation of notional contributions for the purpose of entitlement to a specific pension based in contributions paid before 1967 (Spain), or a judgment linked to C-589/10, *Wencel*[15], on whether a person can simultaneously have two habitual residences in two different MSs for the purpose of SSC (Poland).

However, some judgments on entitlement share the feature that they deal with Article 45 TFEU on **non-discrimination** due to free movement, and the feature that they require a preliminary ruling relatively frequently. For instance, the judgment linked to C-187/15, *Pöpperl*[16], challenges the restrictions for civil servants to access a pension, which may discriminate against persons who left the public administration to work abroad (Germany). The pending joined prejudicial rulings on cases C-398/18, *Bocero Torrico*, and C-428/18, *Bode*[17] (ES), deal with the fulfilment of entitlement requirements for early retirement that must exceed a minimum: should similar *pro rata temporis* pensions received from other MSs be considered in order to fulfil it?

There was also a case regarding a residence-based social security system, questioning if the exclusion from insurance of nationals working abroad and the inclusion of residents who pay neither taxes nor contributions could be discriminatory for those who exercise their right to free movement (Netherlands).

The analyses also present the issues of pension accumulation, the principle of ag-

[14] 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 (Text with relevance for the EEA and for Switzerland), OJ L 284, 30.10.2009, p. 1–42.

[15] Judgment of the Court (First Chamber) of 16 May 2013 in Case C-589/10 Janina Wencel v Zakład Ubezpieczeń Społecznych w Białymstoku, ECLI:EU:C:2013:303.

[16] Judgment of the Court (First Chamber) of 13 July 2016 in Case C-187/15 Joachim Pöpperl v Land Nordrhein-Westfalen, ECLI:EU:C:2016:550.

[17] Judgment of the Court (Eighth Chamber) of 5 December 2019 in Joined Cases C-398/18 and C-428/18 Antonio Bocero Torrico and Jörg Paul Konrad Fritz Bode v Instituto Nacional de la Seguridad Social and Tesorería General de la Seguridad Social, ECLI:EU:C:2019:1050. There was a previous request for a preliminary ruling: C-7/18, Jardón Lamas, which was withdrawn by the national court when the social security administration desisted. See order of the President of the CJEU of 26 April 2018.

gregation or the theoretical amount of pension.

Unemployment benefits

National judgments on unemployment benefits concern rather heterogeneous problems. Most of the judgments deal with entitlement to the benefit or allowance. The application of the **special rules for persons residing outside the competent MS**, i.e. Article 65 of Regulation (EC) No 883/2004[18], is the most transversal topic. Eleven cases were found in five different MSs (Finland, France, Netherlands, Latvia, Poland), most of them dealing with the determination of the beneficiary's centre of interest (this was a recurring problem in Poland, Finland and Latvia[19]) and a non-recurrent one in Netherlands. In this Dutch judgment, it seems that the court decided not to apply C-236/87, *Bergemann*[20], and to base its ruling on the merit of the facts, rather than on strictly legal arguments. The other two cases had to do with the assimilation of foreign conditions of ending of a working relationship to national conditions, in the case of frontier workers (France).

All 16 DE cases have to do with the same complicated topic: **whether legal residence of inactive persons**[21] can be required for the purpose of entitlement to different types of special non-contributory unemployment benefits and allowances. All cases follow up on a CJEU preliminary ruling, either C-67/14, *Alimanovic*[22], on entitlement to jobseekers' allowance, or C-333/13, *Dano*[23] and C-299/14, *Garcia Nieto*[24], both on entitlement to non-contributory subsistence benefits. No cases were found on this topic in the rest of MSs.

Family benefits

The most relevant topic in the field of family benefits is the **determination of the place of residence for entitlement** purposes. Cases were found in 6 different MSs[25] (Germany, Spain, Finland, France, Latvia, Netherlands), a significant number of these dealing directly with determining the place of residence of the family or the children (Germany, Finland, France[26], Latvia). Half of the judgments, however, are follow-up cases of C-611/10, *Hudzinski*[27], on receiving the benefit in the **MS of temporary stay** different from the granting MS (Germany).

General conclusions of the study

1. There are more judgments, recurrent issues and preliminary rulings in SSC than in FMW.
2. The CJEU judgments have helped to establish transversal criteria that are used by courts in all MSs in order to interpret EU law. National courts often base their judgments on CJEU case law that originated in another MS.
3. There are no preliminary rulings on the validity of EU law, neither in FMW nor in SSC.

[18] The judgments usually refer to the analogous Article 71 of repealed Regulation (EC) No 1408/71.

[19] In PL, the courts considered that the objective criteria envisaged in Article 11 of Regulation (EC) No 987/2009 have preference over the subjective ones. In one of the judgments, the court considered that the criteria included in AC Decision No U2 should have been applied.

[20] Judgment of the Court (First Chamber) of 22 September 1988 in Case 236/87 Anna Bergemann v Bundesanstalt für Arbeit, ECLI:EU:C:1988:443.

[21] Article 7 of Directive 2004/38/EC.

[22] Judgment of the Court (Grand Chamber) of 15 September 2015 in Case C-67/14, Jobcenter Berlin Neukölln v Nazifa Alimanovic, ECLI:EU:C:2015:597.

[23] Judgment of the Court (Grand Chamber) of 11 November 2014 in Case C-333/13 Elisabeta Dano, Florin Dano v Jobcenter, Leipzig (Germany), ECLI:EU:C:2014:2358.

[24] Judgment of the Court (First Chamber) of 25 February 2016 in Case C-299/14 Vestische Arbeit Jobcenter Kreis Recklinghausen v Jovanna García-Nieto, Joel Peña Cuevas, Jovanlis Peña García, Joel Luis Peña Cruz, ECLI:EU:C:2016:114.

[25] Whereas 7 MS mentioned cases on family benefits, PL being the only MS that refer to cases in this field but none regarding the determination of the place of residence for entitlement purposes.

[26] Difference between residence and stay.

[27] Judgment of the Court (Grand Chamber) of 12 June 2012 in Joined Cases C-611/10 Waldemar Hudziński v Agentur für Arbeit Wesel – Familienkasse, ECLI:EU:C:2012:339.

4. The national courts do not always request a preliminary ruling when it is necessary.
5. Some recurring issues are repeatedly brought before national courts in both different Member States and one Member State.
6. The domestic courts rarely find national law that is in breach of EU law. However, judgments sometimes result in a modification of the way some national law is interpreted or implemented.
7. Some national courts rely on the AC Decisions and on the Commission's practical guide on applicable law in order to interpret EU law.

Conclusions of the study on FMW

The focus of interest of national courts constitutes:

1) the concept of worker, the status of students and family members,
2) applying the principle of non-discrimination, mainly from the perspective of indirect discrimination (the concept of social advantages): access to social assistance, care, pension entitlements, student rights and access to professional sport,
3) access to work for EU citizens (jobs reserved for citizens, access to jobs in the public sector, language requirements and recognition of diplomas),
4) the right to stay of jobseekers.

Conclusions of the study on SSC

The focus of interest of national courts constitutes:

1. the applicable legislation,
2. posting of workers,
3. refusal to issue the A1 form or its validity,
4. limitations on determining the validity of the foreign A1 form and possible consequences,
5. pensions (more preliminary rulings),
6. unemployment benefits
7. family benefits: the determination of the place of residence, of the beneficiary or of the children, for entitlement purposes and the overlapping of family benefits from different MSs and the application of the priority rules.

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