

Operative part of the judgment

In the event of a transfer within the meaning of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, of an undertaking belonging to a group to an undertaking outside that group, it is also possible to regard as a 'transferor', within the meaning of Article 2(1)(a) of that directive, the group company to which the employees were assigned on a permanent basis without however being linked to the latter by a contract of employment, even though there exists within that group an undertaking with which the employees concerned were linked by such a contract of employment.

(¹) OJ C 220, 12.9.2009, p. 21.

Judgment of the Court (Second Chamber) of 14 October 2010 (reference for a preliminary ruling from the Verwaltungsgericht Halle (Germany)) — Günter Fuß v Stadt Halle

(Case C-243/09) (¹)

(Social policy — Protection of the safety and health of workers — Directive 2003/88/EC — Organisation of working time — Fire fighters employed in the public sector — Operational service — Article 6(b) and Article 22(1)(b) — Maximum weekly working time — Refusal to work longer than that time — Compulsory transfer to another service — Direct effect — Consequence for national courts)

(2010/C 346/26)

Language of the case: German

Referring court

Verwaltungsgericht Halle

Parties to the main proceedings

Applicant: Günter Fuß

Defendant: Stadt Halle

Re:

Reference for a preliminary ruling — Verwaltungsgericht Halle — Interpretation of Article 22(1)(b) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9) — National legislation providing, in breach of that directive, for working time of more than 48 hours during a seven-day period for officials working as on-call professional firefighters — Compulsory transfer of an official who refused to work such hours to a post at the same grade in the administration — Concept of 'detriment'

Operative part of the judgment

Article 6(b) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as precluding national rules, such as those at issue in the main proceedings, which allow a public-sector employer to transfer compulsorily to another service a worker employed as a fire fighter in an operational service on the ground that that worker has requested compliance, within the latter service, with the maximum average weekly working time laid down in that provision. The fact that such a worker suffers no specific detriment by reason of that transfer, other than that resulting from the infringement of Article 6(b) of Directive 2003/88, is irrelevant in that regard.

(¹) OJ C 233, 26.9.2009.

Judgment of the Court (Fourth Chamber) of 21 October 2010 (reference for a preliminary ruling from the Cour constitutionnelle (Belgium)) — Execution of a European arrest warrant issued in respect of I.B.

(Case C-306/09) (¹)

(Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant and the surrender procedures between Member States — Article 4 — Grounds for optional non-execution — Article 4(6) — Arrest warrant issued for the purposes of execution of a sentence — Article 5 — Guarantees to be provided by the issuing Member State — Article 5(1) — Sentence imposed in absentia — Article 5(3) — Arrest warrant issued for the purposes of criminal prosecution — Surrender subject to the condition that the requested person be returned to the Member State of execution — Joint application of Article 5(1) and Article 5(3) — Compatibility)

(2010/C 346/27)

Language of the case: French

Referring court

Cour constitutionnelle

Party to the main proceedings

I.B.

Re:

Reference for a preliminary ruling — Cour constitutionnelle (Belgium) — Interpretation of Articles 4(6) and 5(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) and of Article 6(2) of the EU Treaty — Grounds for optional non-execution of the European arrest warrant and guarantees to be given by the issuing Member State — Possibility for the executing Member State to make the surrender of a person residing on its territory subject to the condition that that person, after having been heard in the issuing Member State, be returned to

the executing Member State in order to serve there the custodial sentence or detention order that may have been imposed on him in the issuing Member State — Particular situation of a person already sentenced in the issuing Member State but under a decision made *in absentia* against which that person still has a remedy — Possible effect on the decision to be taken by the judicial authorities of the executing Member State, arising from a risk of infringement of the fundamental rights of the person concerned and, in particular, of his right to a private and family life

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Articles 4(6) and 5(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States must be interpreted as meaning that, where the executing Member State has implemented Articles 5(1) and Article 5(3) of that framework decision in its domestic legal system, the execution of a European arrest warrant issued for the purposes of execution of a sentence imposed *in absentia* within the meaning of Article 5(1) of the framework decision, may be subject to the condition that the person concerned, a national or resident of the executing Member State, should be returned to the executing State in order, as the case may be, to serve there the sentence passed against him, following a new trial organised in his presence in the issuing Member State.

(¹) OJ C 233, 26.9.2009, p. 11.

Judgment of the Court (Second Chamber) of 14 October 2010 (reference for a preliminary ruling from the Centrale Raad van Beroep (Netherlands)) — J.A. van Delft, J.C. Ramaer, J.M. van Willigen, J.F. van der Nat, C.M. Janssen, O. Fokkens v College voor zorgverzekeringen

(Case C-345/09) (¹)

(Social security — Regulation (EEC) No 1408/71 — Title III, Chapter 1 — Articles 28, 28a and 33 — Regulation (EEC) No 574/72 — Article 29 — Freedom of movement for persons — Articles 21 TFEU and 45 TFEU — Sickness insurance benefits — Recipients of old-age pensions or pensions for incapacity for work — Residence in a Member State other than the State responsible for payment of the pension — Provision of benefits in kind in the State of residence with the cost borne by the State responsible for payment of the pension — No registration in the State of residence — Obligation to pay contributions in the State responsible for payment of the pension — Amendment to the national legislation of the State responsible for payment of the pension — Continuity of sickness insurance — Different treatment of residents and non-residents)

(2010/C 346/28)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Applicants: J.A. van Delft, J.C. Ramaer, J.M. van Willigen, J.F. van der Nat, C.M. Janssen, O. Fokkens

Defendant: College voor zorgverzekeringen

Re:

Reference for a preliminary ruling — Centrale Raad van Beroep — Interpretation of the EC Treaty, Articles 28, 28a, 33, and Annex VI, R, (1)(a) and (b), of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416), and Article 29 of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ, English Special Edition 1972 (I), p. 159) — Recipients of pensions — Obligation to register with the healthcare insurance board in the Netherlands — Obligation to pay a contribution

Operative part of the judgment

- Articles 28, 28a and 33 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006, in conjunction with Article 29 of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended by Commission Regulation (EC) No 311/2007 of 19 March 2007, must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, under which recipients of pensions payable under the legislation of that State who reside in another Member State in which they are entitled under Articles 28 and 28a of Regulation No 1408/71 to the sickness benefits in kind provided by the competent institution of the latter Member State must pay, in the form of a deduction from their pension, a contribution in respect of those benefits even if they are not registered with the competent institution of their Member State of residence.
- Article 21 TFEU must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, under which recipients of pensions payable under the legislation of that State who reside in another Member State in which they are entitled under Articles 28 and 28a of Regulation No 1408/71, as amended by Regulation No 1992/2006, to the sickness benefits in kind provided by the competent institution of the latter Member State must pay, in the form of a deduction from their pension, a contribution in respect of those benefits even if they are not registered with the competent institution of their Member State of residence.